K. C. CHAKRAVARTY'S

THE LAW OF MOTOR VEHICLES IN INDIA

Comprising

The Motor Vehicles Act (IV of 1939)

as amended by

Act XL of 1939 and Act XXVI of 1940

with

The Bengal Motor Vehicles Tax Act, 1932 and The Bengal Motor Vehicles Tax Rules, 1933 and The Indian Motor Vehicles Act, 1914 and Extracts from English Road Traffic Acts of 1930 and 1934 together with a Chapter on the Trial of Motor Car Cases and Complete Schedules.

Revised, Rewritten and Enlarged

By

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PREFACE.

In this edition of the Motor Vehicles Act (IV of 1939) I have inserted "Notes on Clauses" appended to the Bill (L. A. Bill No. 5 of 1938) introduced in the Central Legislative Assembly on the 18th March, 1938, and extracts from the Report of the Select Committee and Proceedings in the Legislative Assembly and the Council of State in proper places. Corresponding sections of the Road Traffic Act, 1930 (20 & 21 Geo. 5. Ch. 43), as amended by the Road and Rail Traffic Act, 1933 (23 & 24 Geo. 5. Ch. 53) and the Road Traffic Act, 1934 (24 & 25 Geo. 5. Ch. 50), have been quoted to elucidate the *provisions of this Act. Cases decided under the old Act (VIII* of 1914) and the rules framed thereunder down to June, 1940 have been incorporated under those sections on which they throw some light.

I have derived great help from Mr. F. Llewellyn Jones's book on the "Road Traffic Law" (1931 Edn.) and Mr. Hector Hughes's book on "The Law Relating to Road Users' Rights, Liabilities and Insurance" (1938 Edn.) from which quotations have been inserted in some places.

In short, every attempt has been made to make this edition useful to the Bench and the Bar and also to those who have been entrusted with the work of carrying out the provisions of this Act.

Nagendra Kumar Bhattacharyya

Berhampore, Bengal,
The 1st day of July, 1940.

INTRODUCTION.

The Motor cab in the guise of a Private carriage or Taxi-cab, and as an omnibus or lorry has developed at an outstanding rate.

The first cabs placed on the streets of London in the year 1903 were not encouraging at all, but the cabs constructed by the French house of Reneault and first introduced in London in the year 1906 rapidly effected a revolutionary change in the means of individual transport. Apart from the improved speed of the motor cabs, they gained popularity because of the use on each one of them, of the Taxi-meter showing at a glance the amount of the fare, thus preventing over-charge on the part of the driver. One effect of the employment of motor-cabs and motor-omnibuses has been to reduce slightly the total number of vehicles and to quicken a large volume of the traffic; it has now been recognised that to increase the speed of the whole of the traffic of London by about 5 miles an hour is practically equivalent to doubling width of the whole of the main streets.

The law relating to locomotives, motor-cars and other mechanically propelled vehicles and to the use of them upon the high way, is, as would be expected, in the absence of codification, a somewhat tangled mass of common law, statute law, case-laws, bye-laws and regulations, eloquent of the rapid development of mechanical traction and of the almost equally rapid changes of public sentiment regarding it.

The British Act of 1903 which was communicated for three years only, was, during the Parliamentary session of 1906 and subsequent sessions, continued from year after year because of the difficulty that was experienced in reconciling conflicting views about the control of motor-cars. The 1903 Act raised the speed limit to 20 miles per hour and gave the Local Government Board power to close the motor traffic at

such rates, as, on enquiry, might be deemed inconsistent therefor, and to impose a speed limit of 10 miles an hour or less in dangerous places, such as narrow streets in a town or through a village.

A few curious accidents in England and abroad have kept alive the fear that the motor-car is a dangerous vehicle which should be restrained or held in check by stringent legislation. Thus from the year 1904 onwards the motorist was under continuous Police supervision. Police traps, which measured distances, over which the motor-car is timed by the Police, were established in most of the countries. It is true that many an innocent driver was unfairly accused whilst motorits guilty of merely technical infringements of the law were penalised.

Since 1903 India has been enjoying the sight of motor vehicles. It was at first considered as an object of luxury but it is not so now. With the gradual introduction of motor vehicles different provincial legislature introduced various legislation. The laws relating to motor vehicles in British India were contained in six separate provincial Acts, viz. Madras Act I of 1907, Bombay Act II of 1904, Bengal Act III of 1903, U. P. Act II of 1911, Punjab Act II of 1907 and Burma Act II of 1906. These Acts though exhibited no important differences of principle, are not identical in form. In the interests of simplicity and in order that owners of motor vehicles may be saved the inconvenience of reference to different provincial Acts, it was thought that the time was ripe when the law on the subject should be usefully consolidated. The consolidation was accordingly made in 1914 when the Indian Motor Vehicles Act, 1914 (VIII of 1914) was passed.

In England number of accidents in which motor vehicles were involved, went on increasing rapidly. This led to a vast increase in the number of actions for damages. With the increased risks and liabilities the question of insurance against them was considered to be a matter of utmost necessity. The Road Traffic Act, 1930 (20 & 21 Geo. 5, Ch. 43) was, therefore,

passed to make provision for the regulation of traffic on roads and of motor vehicles and otherwise with respect to roads and vehicles thereon, to make provision for the protection of third parties against risks arising out of the use of motor vehicles and in connection with such protection to amend the Assurance Companies Act, 1909, to amend the law with respect to the powers of local authorities to provide public service vehicles, and for other purposes connected with the matters aforesaid. It was followed by the Road and Rail Traffic Act, 1933 (23 & 24 Geo. 5. Ch. 53) which was enacted to make provision for regulating the carriage of goods on roads by motor vehicles and for controlling the use of vehicles on certain roads, to amend certain provisions of the Road Traffic Act, 1930, to amend the law relating to railways and to make provision for constituting a council to advise on questions in connection with the means of, and facilities for, transport, and for purposes connected with the matters aforesaid. The Road Traffic Act, 1934 (24 & 25 Geo. 5. Ch. 50), which was passed to amend the Road Traffic Act, 1930, and section thirty-four of the Road and Rail Traffic Act, 1933, and for purposes incidental thereto, improved the system provided for by the Road Traffic Act, 1930. Lastly the Road Traffic Act, 1937 (1 Edw. VIII & 1 Geo. VI, Ch. 44) was passed to provide that motor vehicles, used under certain conditions, are not to be deemed to be stage or express carriages or vehicles carrying passengers for hire or reward at separate fares.

In India, Act VIII of 1914, as amended by Act XII of 1927, was found unsuitable to deal with conditions brought about by the rapid growth of motor transport. The question of the co-ordination of road and railway transport engaged the attention of the Government. In 1933 Messers Mitchell and Kirkness investigated into those problems and submitted a report to the Government of India. In the same year the Road-Rail Conference convened by the Government of India passed a resolution, recommending control of public service and goods motor transport. In 1935 the first Transport Advisory Council made definite recommendations to the same effect. A Bill was

introduced in August, 1936 to amend Act VIII of 1914 on certain points. Meanwhile, the Motor Vehicles Insurance Committee and Wedgwood Committee reports were received. The Government of India, therefore, decided to drop a partial measure and introduce a more conprehensive Bill. This Bill (L. A. Bill No. 5 of 1938) incorporated the main recommendations of those Committees and was the outcome of consultations with the Provincial Governments and the third Transport Advisory Council which deliberated on it in December, 1937. It was introduced in the Central Legislative Assembly on the 18th March, 1938 and was referred to a Select Committee which presented its report on the 8th August of the same year. After undergoing certain changes during its passage through the Legislative Assembly and the Council of State, it was placed on the Statute Book as Act IV of 1939 on the 16th February, 1939, when it received the assent of the Governor-General. It has come into force on the 1st day of July, 1939, but Chapter VIII relating to insurance shall not have effect until the first day of July, 1943.

This Act has been drafted on the lines of the above mentioned English Acts and is a distinct improvement in some respects. It has consolidated the existing law and codified some of the important rules framed by the Provincial Governments with necessary amendments. Provisions have also been made in it which are absolutely new and are intended to cope with the present situation. Certain amendments have been made in it by the Motor Vehicles (Amendment) Act, 1939 (Act No. XL of 1939) and the Motor Vehicles (Amendment) Act, 1940 (Act No. XXVI of 1940) which have been reproduced in Appendix A and Appendix B respectively.

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ERRATUM

At page 158, line 13, substitute "police officer" for "public officer."

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MISCELLANEOUS.

Act, 1914, which was framed to suit conditions at an early stage of development of motor transport, is no longer adequate to deal with conditions brought about by the rapid growth of motor transport in the past two decades. In the interests alike of the safety and convenience of the public and of the development of a co-ordinated system of transport, much closer control is required than the present Act permits, and it is necessary to take powers to regulate transport.

2. The question of the co-ordination of road and railway and the methods by which the object can be secured consistently with the public interest has engaged the attention of the Government of India for some years past. As early as 1933, Messrs. Mitchell and Kirkness carried out, at the instance of the Government of India, an enquiry into these problems and submitted a report in which they emphasized the importance of early action. The Road-Rail Conference convened by the Government of India in the same year passed a resolution, *inter alia*, recommending control of public service and goods and motor transport. In January 1935 the first Transport Advisory Council made definite recommendations to the same effect. In the following year a Bill was framed to give effect to these recommendations which was approved by the second Transport Advisory Council who also recommended a complete overhaul of the Act of 1914 at an early date and the appointment of a committee to enquire into and report on the subject of compulsory insurance of motor vehicles.

3. A Bill was introduced in August 1936 to amend the Act of 1914 on certain points It was, however, recognized then that a more comprehensive measure would have to follow. The Legislature decided that the Bill should be circulated and this was done, but before further action could be taken on it, the reports of the Motor Vehicles Insurance Committee and of the Wedgwood Committee were received. Government decided that in the circumstances it was preferable to drop the partial measure and to present a more comprehensive Bill. The present Bill incorporates the main recommendations of both these Committees and is the outcome of consultations with Provincial Governments and the Third Transport Advisory Council which deliberated on it in December, 1937. The principle of compulsory insurance has been approved by almost all the Provincial Governments, though there are differences of opinion as to whether its adoption should be entirely optional or whether, in the interests of uniformity,

its adoption within a certain period of time should be obligatory

Sub-Sec 1 —This sub-section gives the short title of the Act viz., the Motor Vehicles Act

British India—British India has been defined in the General Clauses Act, 1897. It means all territories and places, within His Majesty's Dominions which are for the time being governed by His Majesty through the Governor General of India or through any Governor or other officer subordinate to the Governor-General of India.

Aden has ceased to be a part of British India Vide sec. 288 of the Government of India Act 1935 (26 Geo. 5 CH.2).

British Baluchistan :—The Motor Vehicles Act is extended to British Beluchistan Vide Gazette of India, dated 17-3-39.

Extent —Some provinces are not in favour of introducing compulsory insurance immediately. It is therefore proposed that Chapter VIII shall not have effect until the 1st day of July, 1943 See Notes on Clause, clause (1)

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) "Axle weight" means in relation to an axle of a vehicle the total weight transmitted by the several wheels attached to that axle to the surface whereon the vehicle rests ;

(2) "Cetificate of registration" means the certificate issued by a competent authority to the effect that a motor vehicle has been duly registered in accordance with the provisions of Chapter III;

(3) "Contract carriage" means a motor vehicle which carries a passenger or passengers for hire or reward under a contract expressed or implied for the use of the vehicle as a whole at or for a fixed or agreed rate or sum and from one point to another without stopping to pick up or set down along the line of route passengers not included in the

contract; and includes a motor cab notwithstanding that the passengers may pay separate fares;

Explanation :—"Contract carriage" does not include a motor vehicle, possession of which has been temporarily transferred in accordance with an express agreement of hire for use as a private vehicle and which is used in accordance with such agreement;

Notes.

Hire —'Hire, is defined (See Bouvier's Law Dictionary) as a 'bailment in which compensation is to be given for the use of a thing . .' The mere payment to the accused of the cost of petrol used while his lorry was at the disposal of the person so paying such charges, is certainly not payment for the use of the lorry. It is equivalent to mere replacement in the petrol tank of the petrol used. There is no payment of compensation for the use of the lorry. The transaction, therefore, does not amount to one of hiring. *Kadir Mohideen Sahib, In re*, 36 Cr L J. 921=156 I. C. 325=41 M. L W. 498=1935 M. W. N. 325=68 M. L. J. 481=A. I. R. 1935 Mad. 577=1935 Cr. C. 923. See also Notes under the heading "Plying for hire" under sec. 11.

Changes made by the Select Committee :—The Select Committee added explanation to this clause.

(4) "delivery van" means any goods vehicle the registered laden weight of which does not exceed 5,000 pounds avoirdupois;

(5) "driver" includes, where a separate person acts as steersman of a motor vehicle, that person as well as any other person engaged in the driving of the vehicle;

Notes.

The definition does not cover a cleaner because he does not take any active part in driving. There may be cases of peculiar types of motor vehicle in which two people are engaged in driving; one man steers and another applies the brakes. The

definition, therefore, includes a steersman who should also obtain a driver's licence.

English Law :—Sec. 121(1) of the Road Traffic Act, 1930 (20 & 21 Geo 5, C. 43) defines "driver" as follows :—"Driver," where a separate person acts as steersman of a motor-vehicle, includes that person as well as any other person engaged in the driving of the vehicle, and the expression "drive" shall be construed accordingly.

(6) "fares" includes sums payable for a season ticket or in respect of the hire of a contract carriage ;

Notes.

This definition was inserted by the Select Committee.

English law :—"Fares" includes sums payable in respect of a contract ticket or a season ticket. *Vide* Sec. 12(1) of the Road Traffic Act, 1930.

(7) "goods" includes live-stock, and anything (other than equipment ordinarily used with the vehicle) carried by a vehicle except living persons, but does not include luggage or personal effects carried in a motor car or in a trailer attached to a motor car or the personal luggage of passengers travelling in the vehicle ;

Notes.

Changes made by the Legislative Assembly :—The words "ordinarily used with the vehicle" have been substituted in place of the words "used for the purposes of propulsion," because there is equipment which is ordinarily carried which cannot be described as equipment used for the purpose of propulsion, such as, for example, a fire extinguisher or a pump. *Vide* Legislative Assembly Debates, dated 17-9-38, Vol. VI, No. 6, page 2621.

(8) "goods vehicle" means any motor vehicle constructed or adapted for use for the carriage of goods, or any motor vehicle not so constructed or adapted when used for

the carriage of goods solely or in addition to passengers ;

(9) "heavy transport vehicle" means a transport vehicle the registered axle weight of which exceeds 10,600 pounds avoirdupois, or the registered laden weight of which exceeds 14,500 pounds avoirdupois ;

Notes.

Changes made by the Select Committee :—The Select Committee inserted the axle weight and raised the laden weight from 12,500 to 14,500 pounds avoirdupois in this definition. This alteration has the effect of raising the limit of weight at which a transport vehicle passes from the category of light transport vehicles to that of heavy transport vehicles. *Vide* Report of the Select Committee, clause 2.

(10) "invalid carriage" means a motor vehicle the unladen weight of which does not exceed five hundred weights, specially designed and constructed, and not merely adapted, for the use of a person suffering from some physical defect or disability, and used solely by or for such a person ;

(11) "licence" means the document issued by a competent authority authorising the person specified therein to drive a motor vehicle or a motor of any specified class or description ;

(12) 'licensing authority" means an authority empowered to grant licences, appointed by the Provincial Government by *rule made under section 21* ;

(13) "light transport vehicle" means any public service vehicle other than a motor cab, or any goods vehicle other than a heavy transport vehicle or a delivery van ;

(14) "locomotive" means a motor vehicle which is itself not constructed to carry any load (other than equipment used for the purpose of propulsion), the unladen weight of which exceeds 16,000 pounds avoirdupois; but does not include a road-roller;

(15) "motor cab" means any motor vehicle constructed, adapted or used to carry not more than six passengers excluding the driver, for hire or reward;

(16) "motor car" means any motor vehicle other than a transport vehicle, locomotive, road-roller, trailor, motor cycle or invalid carriage;

(17) "motor cycle" means a motor vehicle, other than an invalid carriage, with less than four wheels, the unladen weight of which, inclusive of any side-car attached to the vehicle, does not exceed 900 pounds avoirdupois;

(18) "motor vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or used solely upon the premises of the owner;

Notes

Old Law.—This clause corresponds to section 2, paragraph 1 of Act VIII of 1914

Mechanically propelled vehicle.—Although the definition makes it clear that any sort of conveyance if propelled by mechanical power becomes a motor vehicle still an ordinary bicycle if propelled by a mechanical contrivance such as auto-wheel cannot be called a motor vehicle A case was brought

for the purpose of levying taxes against a bicycle which was propelled by such an auto-wheel.

It was held by the Allahabad High Court that such a bicycle cannot be called a motor vehicle. *Emperor* v. *George Banerji*, 14 A.L J. 850 = 36 I.C 877 = 18 Cr. L J. 45.

But the definition of the motor vehicle is very wide. Accordingly it has been held in England that an invalid carriage worked by a small electric motor or an ordinary bicycle to which some mechanical means has been introduced is a motor vehicle. *Vide*, *Elieson* v. *Parker*, (1917) 81 J. P. 265; *Hollands* v. *Williamson*, (1920) 83 J. P. 289, and see *Webster* v. *Terry*, (1914) 1 K B. 51.

A vehicle essentially propelled by mechanical power, even though of a kind normally not so propelled (*e g.*, a bicycle fitted with a motor), or not in fact being mechanically propelled at the time, is within the section *Vide*, Mr. Hector Hughe's book on the Law Relating To Road Users' Rights, Liabilities and Insurance, page 141

(19) "owner" means, where the person in possession of a motor vehicle is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire purchase agreement, the person in possession of the vehicle under that agreement;

Notes

While setting aside the conviction of an owner of motor bus, a boy aged between 4 and 5 years, found guilty of an offence described as being under s 7, Burma Hired Motor Vehicles Rules, Baguley, J., of the Rangoon High Court, in *The King* v. *Ba Ba Sein*, 40 Cr. L. J. 80 = 178 I.C. 508 = A.I R. 1938 Rang. 400 = 1938 Rang. 227, observed "It is of interest to note that although no person under the age of 18 years is allowed to drive, there seems to be no provision against children, however young, being registered owners of motor vehicles, even of hired motor vehicles, which seems a defect in the Act (*i.e.* Act VIII of 1914) and rules which might be brought to the notice of the authorities." In order to remove this defect "owner" of a motor vehicle has been defined to mean, where the person in

possession of a motor vehicle is a minor, the guardian of such minor, for the purposes of this Act.

To avoid any doubt as to who is the owner of a motor vehicle under a hire-purchase agreement, the person in possession of such vehicle is taken to be the owner for the purposes of this Act.

The term in its general application has, however, been not defined

A part owner may come within this definition.

The definition given here will not affect any proprietary rights or any other rights such as any party may have in other respects, *Vide* Legislative Assembly Debates dated 17-9-38, Vol VI—No 6, page 2625.

A motor car was purported to be sold to A for the sum of Rs 1,000 paid by him to the vendor and was transferred in the police records in his name. It was provided in the deed of transfer that the vendor would repay the amount by monthly instalments of Rs 100 or within twelve months, that he was to remain in possession of the car and to ply it for hire and that on repayment of the full sum of Rs. 1,000, it would be re-transferred in the police record in his name *Held*, that A was not the owner of the car, but was a mortgagee with rights of ownership. *Goolbai Motabhai Shroff* v *Pestonji Cowasji Bhandari*. A I R. 1935 Bom. 333 = 37 Bom. L. R. 410 = 159 I. C. 363

English law—Section 12(1) of the Road Traffic Act, 1930, (20 and 21 Geo 5 C. 43) defines the expression "owner" as follows —

"Owner" in relation to a vehicle which is the subject of a hiring agreement or hire purchase agreement, means the person in possession of the vehicle under that agreement

(20) "permit" means the document issued by a Provincial or Regional Transport Authority authorising the use of a transport vehicle as a contract carriage, or stage carriage, or authorising the owner as a private carrier or public carrier to use such vehicle ;

(21) "prescribed" means prescribed by rules made under this Act ;

NOTES.

Prescribed :—Prescribed means prescribed by rules made under this Act. The rules are made by both the Government of India as well as by the Local Government.

(22) "private carrier" means an owner of a transport vehicle other than a public carrier who uses that vehicle solely for the carriage of goods which are his property or the carriage of which is necessary for the purposes of his business not being a business of providing transport, or who uses the vehicle for any of the purposes specified in sub-section (2) of section 42 ;

(23) "public carrier" means an owner of a "transport vehicle who transports or undertakes to" transport goods, or any class of goods, for another person at any time and in any public place for hire or reward, whether in pursuance of the terms of a contract or agreement or otherwise, and includes any person, body, association or company engaged in the business of carrying the goods of persons associated with that person, body, association or company for the purpose of having their goods transported ;

(24) "public place" means a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access, and includes any place or stand at which passengers are picked up or set down by a stage carriage ;

NOTES.

Analysis :—1. It is either a road, street, way or other place.

2. It may or may not be thoroughfare.

3. But the public should have a right of access.

4. It includes any place or stand at which passengers are picked up or set down by a stage carriage.

Compare the provisions of the English High Ways Act, 1896.

In section 2, paragraph 3 of the old Act (VIII of 1914) "public place" used to mean "a road, street, way or other place, whether a thoroughfare or not, to which the public are granted access or over which they have a right to pass." The words "and includes any place or stand at which passengers are picked up or set down by a stage carriage," have now been added. It is, therefore, clear that any place or stand at which passengers are picked up or set down by a stage carriage is a public place irrespective of the public right of access to it

On two sides of the motor stand of the accused there are houses while the city wall runs along the third side. The fourth side, however, is open and looks towards a public street. The land is privately owned and has been leased by the accused persons Through the portion leased by them runs a deep city drain which can only be crossed by means of one bridge and it is over this bridge that the lorries are parked To all intents and purposes, therefore, the accused were keeping their lorries for the purpose of collecting passengers in an enclosed place except that apparently there was no gate at the bridge. Because the lessee allows a limited number of persons to cross the bridge over the ditch to ride on his lorries, it is not sufficient to make it a public place within the definition given in sec. 2 of the Act (VIII of 1914) If any one other than a passenger tries to go there the lessee has the right to make him leave at once He could put up a gate at the bridge and exclude everybody except passengers who have paid their fare It cannot be said to be a public place, that is, a place to which the public are granted access *Abdul Hakim v. Emp*, A. I. R. 1938 Lah. 817 = 40 Cr L J 284 = 179 I C. 921 It is submitted that a place like one referred to in this ruling is now a public place in view of addition of the words "and includes any place or stand at which passengers are picked up or set down by a stage carriage," to the definition of "public place" in this Act

Street :—A street may be both private and public. A public street can be conveniently defined to be any land over which the public has a right of way. If in a case where a portion of the

land is metalled and a portion of the land is not metalled but the public has a right of way over both the portions the unmetalled portion is certainly a public street.

In the case of *Municipal Board of Agra* v. *Sudharshan Das Shastri*, 37 All. 9, the suit was to recover from (1) the Municipal Board of Agra and (2) the Secretary of State for India in Council damages for alleged trespass in respect of certain land. It was held that where the question is as to the breadth of a public road, it must be taken that all the ground over which the public have right of way is part of the road; the mere fact that part of the road may be metalled for the greater convenience of the traffic will not render the unmetalled portion on each side any the less a public road or street

In the case of *Kumud Bandhu Das Gupta* v *Kishori Lal Goswami*, 9 I C. 562, certain land was kept open for the purpose of allowing people generally to pass over it to visit a religious car preserved in a shed on the road and the people pass over by the implied permission of the shebaits to pay pronams to the idol of the car, for a certain time in each year traffic is entirely stopped and the land was held by the shebaits who collected tolls. It was held that the public have no right of way as of right over the open land, which is not, therefore, a public road

A right of way might be acquired either by grant or by prescription—where grant is established—the matter becomes an easy one; with regard to prescriptions it appears from the decision of Their Lordships of the Privy Council in *Muhammad Rustom Ali Khan* v. *Municipal Committee of Karnal City* (L. R. 47 I. A 25 P.C.) that what is necessary is to adduce such proof from which "dedications to the public" can be inferred. In that case the dispute arose over an enclosed courtyard. The point at issue was whether the yard was a public street and that depended on whether there was a public right of way over it. Admittedly the place was enclosed by gates, and it also appeared to be clear that there was no use of such land for a long duration from which an inference of such a dedication would naturally arise. In the case of *Ardeshir Jivanji Mistri* v. *Atmai Kuraiji*, 53 Bom 187, the evidence proved conclusively that so far as living memory goes the passage had been used as public road. Under such circumstances the correct inference to draw was that it had been so used from time immemorial, and that at all material dates

in question; it was therefore a public highway In using the expression public highway, it should not be overlooked what is stated in the case just cited *viz*, quotation from *Poole* v. *Huskinson*, (1843) 11 M. & W. 830 where it is said: "There may be a dedication to the public for a limited purpose, as for a footway, horseway, or drift way, but there cannot be a dedication to a limited part of the public." In the Bombay case, one aspect of it was put by the plaintiff as if the right of way was limited to the villagers of a particular village of Gondavli or possibly extended to one or two surrounding villages. It was held there that that was a public highway in the ordinary sense of the word.

Regarding the authority for the proposition that a limited access by the public to a private place does not operate to convert it into a public street, see - *Kalidas* v *Municipality of Dhandhuka*, 6 Bom 686, *The Ahmedabad Municipality* v *Manilal Udenath*, 20 Bom. 146.

English Law —Sec 121 (1) of the Road Traffic Act, 1930, defines "Road" as follows .—

"Road" means any highway and any other road to which the public have access, and includes bridges over which a road passes

(25) "public service vehicle" means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a motor cab, contract carriage, and stage carriage;

English Law —Sec 121 (1) of the Road Traffic Act, 1930, defines the expression as follows '—

'Public service vehicle" "means a motor vehicle used for carrying passengers for hire or reward other than a vehicle which is a contract carriage within the meaning of this Act adapted to carry less than eight passengers or a tram car or a trolly vehicle

(26) "registered axle weight" means in respect of any vehicle the axle weight certified and registered by the registering authority as permissible for that vehicle;

(27) "registered laden weight" means in respect of any vehicle the total weight of the vehicle and load certified and registered by the registering authority as permissible for that vehicle ;

(28) "registering authority" means an authority empowered to register motor vehicles under Chapter III ;

(29) "stage carriage" means a motor vehicle carrying or adapted to carry more than six persons excluding the driver which carries passengers for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey ;

(30) "tractor" means a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion) the unladen weight of which does not exceed 16,000 pounds avoirdupois ; but excludes a road-roller ;

(31) "traffic signs" includes all signals, warning sign posts, direction posts, or other devices for the information, guidance or direction of drivers of motor vehicles ;

(32) "trailer" means any vehicle other than a side-car drawn or intended to be drawn by a motor vehicle ;

(33) "transport vehicle" means a public service vehicle, a goods vehicle, a locomotive or a tractor other than a locomotive or tractor used solely for agricultural purposes ;

(34) "unladen weight" means the weight of a vehicle or trailer including all equipment ordinarily used with the vehicle

or trailer when working, but excluding the weight of a driver or attendant; and where alternative parts or bodies are used the unladen weight of the vehicle means the weight of the vehicle with the heaviest such alternative part or body;

(35) "weight" means the total weight transmitted for the time being by the wheels of a vehicle to the surface on which the vehicle rests.

Notes.

The following are the terms which are commonly used in motor industries :—

Accelerator—is a foot throttle, generally used by a pedal to act on the throttle independently of the ordinary and throttle lever.

Apron—The under-shield of sheet metal that protects the engine, gear-box, etc , from mud and dust

Balance Gear—is the differential gear which permits the driving wheels of a car to turn to requirements

Ball bearing—when a shaft rolls over a surface, there is a little friction than when it slides, but when shaft is rotating in a plain bearing, its surface is only sliding relatively to the surface of the bearing. To avoid the sliding action the shaft may be carried on steel-balls which roll round.

Bath—is a receptacle for oil to enable the machinery to run in a lubricant condition.

Battery—A battery is a collection of cells for producing electric current.

Bearing—is the rigid seating upon which a shaft rotates, and being stationary is naturally and practically incorporated in the construction of the gear-box, engine etc.

Block Tyre—is a solid rubber tyre.

Body—is the carriage portion of a motor vehicle, built for the accommodation of the passenger.

Bracket—is the fitting for carrying the lamps.

Brake—is a device for retarding a vehicle by stopping the rotation.

Carburettor—is a mechanism to expose a sufficiently large surface petrol to the air to enable the latter on its way to engine, to take up a sufficient amount of petrol vapour.

Chassis—is the complete department of a car as distinct from the body.

Clutch—is a device by which the power of the engine may be transmitted at will to the gear-box and car wheels.

Condenser—is equivalent to an air vessel on a water pump.

Contact Maker—They are of two kinds. The "make and break" and the "wipe." The former rapidly revolving on the half time shaft, acting on a plate spring, moves the latter against a contact screw so that the circuit is quickly made. The latter is a steel-shod spring wiper and bears on a circular contact maker.

Cut-out—is an automatic arrangement to disconnect the dynamo and accumulators as soon as the speed of the former falls below a certain point.

Cylinder—is the tubular shaped part of the engine in which the piston is driven up and down.

Damping—is the process of deadening the shock of sudden movement.

Dash-board—is the board in front of the driver.

Detachable rim—is an ordinary artillery wheel made up of the hub, spokes, felloe, and the rim.

Detachable wheel—is a wheel which can be quickly and easily detached.

Exhaust pipe—is a pipe by which the exhaust gases flow from the cylinder.

Exhaust valve—is a valve to regulate the flow of exhaust gases from the cylinder.

Fan—Fan is placed behind the radiators to encourage the flow of cooling air by rotating at high speed.

Felloe—is the wooden reem of a wheel into which the outer ends of the spokes butt, which in turn is surrounded by the steel rim which constitutes the tyre in the case of hard type vehicles and which accommodates the tyre in the case of India rubber shod vehicles.

Fly wheel—is a heavy wheel with a heavy rim secured to the crank shaft of the engine.

Frame—is the structural part of the vehicle which carries the mechanism and the body.

Friction gear—is a form of change speed transmission depending upon the friction between two wheels instead of on the teeth of gear wheels.

Gear—is applied to mechanism for transmitting rotary motion from one to another shaft and for converting speed into power, more or less *vice versa*.

Gear box—the casing in which the gear mechanism for converting the high rotation speed of the engine into lower speed and greater turning power for the propeller shaft is contained

Generator—is applied to boilers specially to those of the flash or semi-flash type.

Ignition—is the firing of the explosive charge in the cylinder and for practical purposes it is carried out by one or two broad systems, it may be done either by battery or magnets.

Jack—is a contrivance for lifting heavy weights, specially vehicle

Mileometer—is an instrument for measuring distance by mileage

Mud-guard—is the protective covering placed over the wheels of a vehicle to prevent mud being splashed over the vehicle.

Radiator—is an appliance for cooling the circulating water which is being passed through it

Regulator—is the throttle

Reverse-gear—is a mechanism for allowing the vehicle to travel backward

Rim—is a metal ring or band of flanged section steel that surrounds a wheel and accommodates the tyre.

Screen—is a glass protection placed in front of the driver which can be put at any required angle.

Silencer—is the metal box into which the exhaust gases from the engine are passed and expanded before going out into the atmosphere.

Sparking plug—is the devise by which the electric current for the ignition is carried from the outside to the inside of the

cylinder, and also affords the point at which the spark is produced.

Speedometer—is an instrument for measuring, and often for recording, the speed of a car.

Spiral-gear—is used for skew or helical gear.

Steering-gear—is the mechanism used for directing the vehicle as required.

Steering lock—is the maximum angular amount that the front or steered wheels can swivel round from side to side.

Steering wheel—is a wheel at the top of the steering column by the rotation of which the driver controls the direction of the car.

Tourer—is a vehicle with an open body.

Trembler—is a devise used for breaking the circuit.

Vulcanising—is a means by which tyres are repaired.

CHAPTER II.

Licensing of Drivers of Motor Vehicles.

3(1) No person shall drive a motor vehicle in any public place unless he holds an effective licence issued to himself authorising him to drive the vehicle ; and no person shall so drive a motor vehicle as a paid employee or shall so drive a public service vehicle unless his licence specifically entitles him so to do.

(2) A Provincial Government may prescribe the conditions subject to which sub-section (1) shall not apply to a person receiving instruction in driving a motor vehicle.

(3) Nothing contained in sub-section (1) shall for a period of twelve months after the commencement of this Act invalidate a licence to drive a motor vehicle issued by a competent authority under the provisions of the Indian Motor Vehicles Act, 1914.

Notes

"Notes on Clauses".—This section makes a distinction between professional and private drivers Some provinces have already the distinction and others have an implied distinction in that drivers who intend to work as chauffeurs have photographs on their licences.

Sub-section (2) lays down that Provincial Governments may prescribe conditions subject to which sub-section (1) shall not apply to a person receiving instruction in driving a motor vehicle. If the Provincial Governments do not make any rule under this sub-section, no person will be entitled to learn driving without a licence.

Sub-section (3), which was inserted by the Select Committee, makes explicit provision for the continuance for one year of licences issued under the superseded Act of 1914. It is then intended that all such licences shall be replaced by licences issued under the new Act, in the manner and in the form provided by the Act. *Vide* Report of the Select Committee, clause 3.

Effective Licence :—That is a licence which is in force.

English Law :—Section 4 of the Road Traffic Act, 1930, which provides for licensing of drivers etc., runs as follows :—

Licensing of drivers, etc.

4.—(1) A person shall not drive a motor vehicle on a road unless he is the holder of a licence, and a person shall not employ any person to drive a motor vehicle on a road unless the person so employed is the holder of a licence, and if any person acts in contravention of this provision, he shall be guilty of an offence.

(3) Subject to the provisions of this Part of this Act as to the physical fitness of applicants for licences, the licensing authority, except in the case of an applicant who is disqualified as hereinafter mentioned, shall on payment of a fee of five shillings grant a licence to any person who applies for it in the prescribed manner and makes a declaration in the prescribed form that he is not, under the provisions of this Part of this Act, disqualified by reason of age or otherwise for obtaining the licence for which he is applying.

(3) Licences shall be in the prescribed form, and where under the provisions of this Part of this Act the application is subject to any restriction with respect to the driving of any class of motor vehicle, the extent of the restriction shall be specified in the prescribed manner on the licence.

(4) Subject to the provisions of this Act with respect to provisional licence, a licence shall, unless previously revoked or surrendered, remain in force for a period of twelve months from the date on which it is granted.

(5) Any person driving a motor vehicle on a road shall *on being so required by a police constable produce* his licence for examination, so as to enable the police constable to ascertain the name and address of the holder of the licence, the date of issue, and the authority by which it is issued, and

if he fails so to do, he shall be liable to a fine not exceeding five pounds:

Provided that, if within five days after the production of his licence was so required, the licensee produces the licence in person at such police station as may be specified by him at the time its production was required, he shall not be convicted of an offence under this sub-section.

(6) A person shall be disqualified for obtaining a licence—

(a) while another licence granted to him is in force whether the licence is suspended or not,

(b) If he is by a conviction under this Part of this Act or by an order of a Court thereunder disqualified for forbidding or obtaining a licence

(7) In any proceedings the fact that a licence has been granted to a person shall be evidence that that person for the purpose of obtaining that licence made a declaration that he was not disqualified for holding or obtaining the licence

(8) In this Part of this Act the expression "licence" means a licence to drive a motor vehicle granted under this Part of this Act, and the expression "licensing authority" means the council of the county or county borough in which the applicant for the licence resides.

See also Notes under section 5

4. (1) No person under the age of eighteen years shall drive a motor vehicle in any public place.

(2) Subject to the provisions of section 14, no person under the age of twenty years shall drive a transport vehicle in any public place.

(3) Nothing contained in sub-section (1) or sub-section (2) shall prevent any person who, before the commencement of this Act, possessed a licence to drive a motor vehicle from obtaining a licence to drive a motor vehicle of the same class.

Notes.

Notes on Clauses :—Although most provinces agree to the 21-year minimum age limit for drivers of transport vehicles and have such provision in their existing rules, one or two others see no necessity for this restriction. Sub-clause (3) will therefore enable them to allow drivers under 21 to drive transport vehicles, particularly delivery vans within the province only.

Select Committee Report :—The Select Committee reduced the minimum age qualifying a person to drive a locomotive tractor or transport vehicle from 21 years to twenty years. It also eliminated the provision allowing Provincial Governments to modify the requirements of sub-clause (2) and provided that any person who possessed a licence under the pre-existing law should not by reason of the change in the law be deprived of his licence.

Old law :—Sec. 4(1) of this Act is a verbatim reproduction of sec. 3(1) of Act VIII of 1914.

Shall drive :—It means to say that no one can be prosecuted unless he was actually driving. 101 I. C. 668.

English Law .—Section 9 of the Road Traffic Act, 1930, which corresponds to this section, runs as follows :—

Restriction on driving by young persons.

9 (1) A person under sixteen years of age shall not drive a motor vehicle on a road unless on first applying for a licence after the commencement of this Act he satisfies the licensing authority that he was during the six months immediately preceding the first day of January, ninteen hundred and thirty, in the habit of driving a motor vehicle.

(2) A person under seventeen years of age shall not drive a motor vehicle other than a motor cycle or an invalid carriage on a road.

(3) A person under twenty-one years of age shall not drive a heavy locomotive, light locomotive, motor tractor or heavy motor car on a road unless on first applying for a licence after the commencement of this Act he satisfies the licensing authority that he was during the six months preceding the first day of January, nineteen hundred and thirty, in the habit of driving a motor vehicle of that class :

Provided that a vehicle being an agricultural tractor shall

not be deemed to be driven on a road within the meaning of this sub-section while it is being so driven in the course of internal operations of a farm.

(4) Any person who drives, or causes or permits any person to drive, a motor vehicle in contravention of this section, shall be guilty of an offence

(5) A person prohibited by this section by reason of his age from driving a motor vehicle or a motor vehicle of any class, shall, for the purposes of this Part of this Act, be deemed to be disqualified under the provisions of this Part of this Act for holding or obtaining any licence other than a licence to drive such motor vehicles, if any, as he is not by this section forbidden to drive.

5. No owner or person in charge of a motor vehicle shall cause or permit any person who does not satisfy the provisions of section 3 or section 4 to drive the vehicle.

Notes.

Select Committee Report.—In the bill as introduced in the Legislative Assembly on 18-3-38, this section also provided "and in the event of any such contravention a Court may presume that the vehicle was being driven with the consent of the owner or person in charge" The Select Committee eliminated this provision

Old Law—Sections 3 and 5 of this Act correspond to sections 3 (2) and 6 of Act VIII of 1914.

Expiry of the period of licence—A man cannot entrust his car to another person and plead that he presumed that he was licensed. He must assure himself that he is licensed. Therefore, where a driver drove a car with a licence the period of which had already expired, the owner was held liable under section 6 of Act VIII of 1914 which corresponds to this section. *Crown Prosecutor v. Khadir Mohideen*, 28 Cr. L J 962 = 105 I.C 671 = 26 M. L. W. 568 = 1927 M.W.N. 852 = 53 M.L.J. 757 = A.I R. 1927 Mad. 1080 = 51 Mad. 187.

Master's liability for acts of servant:—Where a particular intent or state of mind is not of the essence of an offence, a

master can be made criminally liable for his servant's acts if an act is expressly prohibited but not otherwise and he cannot be so made liable if the act provides for liability for permitting and causing a certain thing unless it can be shown that the act was done with the master's knowledge and assent, express or implied. *Varaj Lal v. Emperor* 82 I.C. 137 = 51 Cal. 918 = 28 C.W.N. 854 = A.I.R. 1924 Cal. 985 = 25 Cr. L. J. 1209. But a servant has no implied authority to engage a stranger to do work on behalf of his master, so as to render the master liable for the stranger's acts or defaults except perhaps in a case of necessity, which term comprises only some well-known exceptional cases. *Gwilliam v. Twist*, (1895) 2 Q.B. 84 = 64 L.J Q.B. 474 = 14 R 461 = 72 L.T. 579 = 43 W. R. 566 = 59 J.P. 484; *Harris v. Fiat Motors*, (1907) 23 T.L.R. 504 (both of which were cases in which the driver left the control of the car allowing it to be driven by a stranger). Similarly, where a driver, contrary to instructions, allowed a third person to drive who knocked down a passer-by, it was held that the owner was not liable as the driver had acted outside the scope of his authority. *Coogan v. Dublin Motor Co.*, (1914) 49 Ir. L. T. 524. But the owner's liability may arise if the driver retains control of the car and allows a stranger to drive negligently. *Ricketts v Tilling Ltd.*, (1915) 1 K.B. 644 = 84 L.J.K B. 342 = 112 L.T. 137 = 31 T.L.R. 17, *Richard v. Shard*, (1914) 31 T.L.R. 24. On these principles the owner of a motor vehicle cannot be convicted if his driver has a licence himself but allowed another person to drive who had not a licence, because in that case the driver had clearly acted outside the scope of his authority in doing so and it cannot be said that the matter was within the control of the owner and could have been prevented by ordinary care. *Indra Mohon Roy v. Emperor* 29 Cr. L.J. 694 = 110 I.C. 326 = 47 C.L.J. 460 = A.I.R. 1928 Cal. 410. See also *Emp. v. Santaram Rama Wadkar*, 33 Cr. L.J. 746 (748) = 139 I C. 270 = 34 Bom. L.R. 897 = A I.R. 1932 Bom. 474 = 1932 Cr. C. 692 = Ind. Rul. 1932 Bom. 490.

The licensees are in law responsible for all that their servants do. The principle is that the act of the servant of a licensee is the act of his master and that it is the licensee who does everything that is done under cover of the license. It is he who undertakes to conform to the terms of it and to be responsible that no breach of it takes place. So persons licensed to ply motor vehicles are responsible for the breach of conditions of license by their servants. Where, therefore, license was given to ply motor car on particular routes but the

conductor of the car plied it on a different road which is not allowable under Madras Rules, the licensee was guilty of the offence *Sivarama Mudaliar* v. *Muthunnaiengar*, 28 Cr L. J. 566 = 102 I C 502 = 52 M.L.J. 561 = 38 M L.T. 320 = A I.R. 1927 Mad 612 = 26 M. L W. 13 = 50 Mad. 913 = 1927 M. W. N. 925

See also Notes given under sec. 112.

Shall cause or permit —These words have been used in place of the words "shall allow" in section 6 of Act VIII of 1914. The expression involves permission express or implied. The prosecution must show either express permission or facts from which the Court can properly infer an implied permission.

Where the owner of a motor car was charged under section 6 of Act VIII of 1914 for having allowed his car to be taken by his driver beyond the limits of the license, it was held, that in the absence of evidence that the car had been used in that way before or that the owner knew that it would be used in that way on the occasion in question, the owner was not liable. *Emperor* v *Shantaram Rama Wadkar*, supra

Charge :—The charge of allowing an unlicensed man to drive is not included logically in the charge of abetting his driving rashly and negligently. Therefore, where accused No. 2 was not asked to plead to a charge of an offence under the Motor Vehicles Act but was charged with aiding and abetting accused No. 1 in driving rashly and negligently, he could not be convicted of the former. *Mahomed Jamal* v. *Emperor* 30 Cr L. J. 1077 (1078) = 119 I.C. 536 = Ind. Rul. 1929 Sind. 216 = A.I.R. 1930 Sind. 64.

6. (1) No person shall, while he holds any *licence for the time being in force, hold* any other licence except a licence issued in accordance with the provisions of section 14, or a document authorising, in accordance with the rules made under section 92, the person specified therein to drive a motor vehicle.

(2) No holder of a licence shall permit it to be used by any other person.

(3) Nothing in this section shall prevent a licensing authority having the jurisdiction referred to in sub-section (1) of section 7 from adding to the classes of vehicle which the licence authorises the holder to drive.

Notes.

Clause (1):—There is a document called an international driving permit which may be issued under the rules framed under section 92 and is a licence for the purposes of the definition in this Act. There is no reason why a person who obtains such a document be made to surrender his licence. In this view of the matter the motion of Mr. K. G. Mitchell for addition of the words and figures "or a document authorising, in accordance with the rules made under section 92, the person specified therein to drive a motor vehicle" at the end of this clause was accepted by the Legislative Assembly. *Vide*, page 1309, Vol. V, No. 4 of the Legislative Assembly Debates.

Clause (2):—This clause corresponds to section 7 of Act VIII of 1914. It makes a licence non-transferable.

Clause (3):—This clause, which was inserted by the Select Committee, explicitly saves the power to add further classes of vehicle to those specified in an existing licence.

Position of a licencee:—A licencee is one whom the licenser has not invited, and in whose being there he has no interest. Licenser has permitted the licencee to do something. The measure of duty to a licensee where the licenser accepts the duty of carrying him differs, however, from the measure of duty where he merely permits him to do something.

The case of *Tolhausen v. Davies*, 58 L. J. Q. B. 98 where a negligently driven horse ran away and entering the owner's yard knocked down a woman who had come to call on the owner's wife, was said not to turn on the capacity in which the woman was there. This seems questionable, but if it is so, then the decision (based on this, that the driver was not bound to foresee her presence) appears to conflict with Re: *Polemis and Furness Withy*, (1921) 3 K. B. 560.

7. (1) Any person who is not disqualified under section 4 for driving a motor vehicle and who is not for the time being disqualified for holding or obtaining a licence may apply to the licensing authority having jurisdiction in the area in which he ordinarily resides or carries on business or, if the application is for a license to drive as a paid employee, in which the employer resides or carries on business, for the issue to him of a licence.

(2) Every application under sub-section (1) shall be in Form A as set forth in the First Schedule, shall be signed by, or bear the thumb impression of, the applicant in two places, and shall contain the information required by the form

(3) Where the application is for a licence to drive as a paid employee or to drive a transport vehicle, or where in any other case the licensing authority for reasons to be stated in writing so requires, the application shall be accompanied by a medical certificate in Form C, as set forth in the First Schedule, signed by a registered medical practitioner.

(4) Every application for a licence to drive as a paid employee and every application for a licence to drive a transport vehicle shall be accompanied by three clear copies of a recent photograph of the applicant.

(5) If, from the application or from the medical certificate referred to in sub-section (3), it appears that the applicant is suffering from any disease or disability specified in the Second Schedule or any other disease or disability which is likely to cause the drivin by him of a motor vehicle of the class wl

he would be authorised by the licence applied for to drive to be a source of danger to the public or to the passengers, the licensing authority shall refuse to issue the licence :

Provided that—

(a) a licence limited to driving an invalid carriage may be issued to the applicant if the licensing authority is satisfied that he is fit to drive such a carriage,

(b) the applicant may, except where he suffers from a disease or disability specified in the Second Schedule, claim to be subjected to a test of his fitness or ability to drive a motor vehicle of a particular *construction or design, and, if he passes* such test to the satisfaction of the licensing authority and is not otherwise disqualified, the licensing authority shall grant him a license to drive such motor vehicle as the licensing authority may specify in the licence.

(6) No licence shall be issued to any applicant unless—

(a) he passes to the satisfaction of the licensing authority the test of competence to drive specified in the Third Schedule, or

(b) where the application is made within twelve months from the commencement of this Act, he satisfies the licensing authority that he was at the commencement of this Act the holder of a current licence granted under the provisions of the Indian Motor Vehicles Act, 1914, entitling him to drive a vehicle of the class or description which he

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would be entitled to drive under the licence applied for :

Provided that, where the application is for a licence to drive a motor cycle or a motor car, the licensing authority shall exempt the applicant from Part I of the test specified in the Third Schedule if the licensing authority is satisfied that the applicant has previously held a licence to drive and has had not less than twelve months' recent experience of driving a motor cycle or a motor car, as the case may be :

Provided further that where the application is for a licence to drive a motor vehicle (not being a transport vehicle) otherwise than as a paid employee, the licensing authority may exempt the applicant from Part I of the test specified in the Third Schedule if the applicant possesses a driving certificate issued by an automobile association recognised in this behalf by the Provincial Government.

(7) The test of competence to drive shall be carried out in a vehicle of the type to which the application refers, and, for the purposes of Part I of the test,—

(a) a person who passes the test in driving a motor car or a motor cab or a delivery van shall be deemed to have passed the test for all of these vehicles ;

(b) a person who passes the test in driving a light transport vehicle shall be deemed also to have passed the test in driving the vehicles referred to in clause (a) ; and

(c) a person who passes the test in driving a heavy transport vehicle shall

be deemed also to have passed the test in driving any motor vehicle other than a motor cycle.

(8) When an application has been duly made to the appropriate licensing authority and the applicant has satisfied such authority of his physical fitness and of his competence to drive and has paid to the authority a fee of five rupees, the licensing authority shall grant the applicant a licence unless the applicant is disqualified under section 4 for driving a motor vehicle or is for the time being disqualified for holding or obtaining a licence :

Provided that—

(a) the fee for a licence issued in accordance with the provisions of clause (b) of sub-section (6) shall be three rupees only, and

(b) a licensing authority may issue a licence to drive a motor cycle or a motor car notwithstanding that it is not the appropriate licensing authority, if the licensing authority is satisfied that there is good reason for the applicant's inability to apply to the appropriate licensing authority.

Notes.

Notes on Clauses :—Clause (3).—The consensus of opinion of the Provincial Governments is that medical certificates should be obligatory for all drivers other than owner drivers, and even for the latter the licensing authority should be empowered to demand a medical certificate if he is not satisfied as to the applicant's general appearance of fitness.

Clause (4).—The consensus of opinion of Provincial Governments is that photographs should be submitted by these two classes of applicants.

Clause (6)—Since the intention is that licence should be valid throughout British India, all applicants for new licences should pass the test specified in the Third Schedule in driving the class of vehicle specified in the application. An exception is made of existing licences under the Indian Motor Vehicles Act, 1914, as it would be impracticable to insist on their passing the driving test.

The proviso will meet the case of applicants particularly from overseas who have previously held licences granted in their own countries.

Changes made by the Select Committee:—*Clause (1)*.—The words "or, if the application is for a licence to drive as a paid employee, in which the employer resides or carries on business," were introduced by the Select Committee with a view to facilitate the obtaining of a licence by a person employed in a place far from his ordinary residence. It seems appropriate that he should be able to apply to the licensing authority of the locality in which his employment lies.

Clause (3)—The Select Committee inserted the words "for reasons to be stated in writing," thinking that a licensing authority which exacts a medical certificate should state its reasons for the demand.

Clause (4).—By substituting "transport vehicle" for "public service vehicle" the Select Committee extended the scope of the provisions of this clause to vehicles used for the carriage of goods. The insertion of the word "recent" before the word "photograph" is self-explanatary.

Clause (5).—The diseases and disabilities which disqualify a person for obtaining a licence are set forth in the Second Schedule The Select Committee accordingly substituted a reference to this schedule for the reference to Form C The Select Committee also introduced clause (b) in the proviso so that a person confronted with the danger of being held disqualified on the grounds mentioned in that Schedule should have a right to appeal to a Medical Board before he is actually refused a licence. This clause was, however, deleted in course of the debates in the Legislative Assembly and clause (c) was numbered as clause (b).

Clause (6)—The change (*i e.* insertion of the words "was at the commencement of this Act' in place of the words "is

the same, to any rules made by the Central Gevernment under section 92 and subject in any other case to the provisions of sub-section (4), a licence to drive a motor vehicle issued by a competent authority in any Indian State or in the French or Portuguese Settlements bounded by India shall, if the holder is ordinarily resident in the State or Settlement in which the licence was issued, be valid throughout British India as if it were a licence issued under this Act:

Provided that such holder is not disqualified under any of the provisions of this Act for holding or obtaining a licence in British India.

(3) A Provincial Government may, by rules made under section 21,—

(a) provide that a specification entitling the holder of a license to drive a public service vehicle shall be made in the licence only by or under the authority of the Regional Transport Authority constituted under Chapter IV,

(b) regulate the submission of applications for such licenses to the said authority, or

(c) require as a condition of its validity in a province that a licence entitling the holder to drive a public service vehicle shall be countersigned by a prescribed authority in the province.

(4) If the Central Government is satisfied that licences issued in British India under this Act are not effective in any Indian State or French or Portuguese Settlement bounded by India or are effective subject to

unreasonable conditions or that like conditions and requirements to those imposed by this Act are not imposed in a reasonable degree upon the issue of licences in any State or Settlement as aforesaid, the Central Government shall, by notification in the official Gazette, declare that licenses generally or any particular class of licence issued in any such State or Settlement shall not be valid in British India.

Notes.

Old law :—Section 9 of Act VIII of 1914 corresponds to this section.

Notes on Clauses :—**Clause (1)** —There are varying opinions as to how far licences should have all-India validity. One or two provinces are in favour of extending all-India validity to all licences including those to drive public service vehicles. On the other hand, one province would not extend all-India validity to a licence to drive a goods vehicle One or two would like power to impose special restrictions in special areas. The majority, however, feel that drivers of public service vehicles should be under stricter supervision in view of their responsibility for the safety of the public. It is therefore proposed that licences to drive public service vehicles should by provincial rules only be valid in the province when endorsed to that effect, and that in view of the stringency of the specified test for drivers, all-India validity should be extended to all other forms of licenses.

Clause (2).—The position in respect of the validity of licences issued in States is chaotic Most provinces have rules extending validity to licences issued in States specified in a schedule to the rules but these have not been uniformly *amended and frequently differ in consequence* It is proposed therefore that licences issued by States to *bona fide* residents should generally be valid.

Clause (3).—The general opinion is that while the licensing authority should judge as to a person's competence and physical fitness to drive, the transport authority in the discharge of its special responsibility for the control of public service vehicles should have the final say as to the persons by

whom such vehicles should be driven. There is however some difference of opinion in this matter, and it is therefore left to the rule making powers of Provincial Governments.

Changes made by the Select Committee :—The Select Committee have recast this section in order to secure that there shall be reciprocity in connection with the recognition in British India of licences issued outside it. For this purpose it has been provided that the privilege of having its licences recognised as valid in British India may be withdrawn from any State or Territory if it is found that the recognition is not mutual, or that the issue of licences in that State or Territory is not adequately controlled

In consequence of these changes the references in sub-clauses (2) and (3) to controlling rules to be made by the Provincial Government, and to prescribe conditions have been removed.

The other small changes of wording and arrangement made in sub-clause (3) are drafting changes only.

Currency of licences.

10. A licence issued under the foregoing sections shall, subject to the provisions contained in this Act as to the cancellation of licences and the disqualification of holders of licences for holding or obtaining licences, be effective without renewal for a period of twelve months only from the date of issue or last renewal.

Notes.

Changes made by the Select Committee :—The Select Committee added the words "or last renewal" at the end of this section to make it clear that a renewal of a license operates only for twelve months.

Provisions regarding cancellation of licences and disqualifications of holders thereof are contained in sections 12, 15, 16 and 17 of this Act. Section 18 provides for the effect of a disqualification order.

Renewal of licences.

11. (1) Any licensing authority may on application made to it renew a licence issued under the provision of this Act.

(2) An application for the renewal of a licence shall be made in Form B as set forth in the First Schedule and shall contain the declaration required by that form; provided that where the applicant does not or is unable to subscribe to the said declaration the provisions of sub-section (5) of section 7 shall apply.

(3) The fee payable for the renewal of a licence shall be three rupees, if the application for renewal is made previous to, or not more than fifteen days subsequent to, the date on which the licence is due to expire and shall be five rupees in any other case, unless the licensing authority is satisfied that the holder was prevented by good cause from applying for the renewal of the licence within fifteen days after its expiry.

(4) When the authority renewing the licence is not the authority which issued the licence, it shall intimate the fact of renewal to the authority which issued the licence.

Notes

Notes on Clauses.—Clause (3).—A uniform renewal fee is necessary. Provision is made for the renewal at ordinary rates of an expired licence by a person who, for example, has been ill for a sustained period or out of India on long leave and so genuinely unable to renew his licence in time.

Changes made by the Select Committee.—Clause (1)—The Select Committee inserted the words "under the provisions of this Act" at the end of this clause to secure that licences under the superseded law will not be renewed, but will be replaced by licences issued under the new Act.

Clause (3).—The Select Committee allowed fifteen days, in place of seven days, of grace after the expiry of a licence.

Revocation of licence on grounds of disease or disability.

12. Notwithstanding anything contained in the foregoing sections, a licensing authority may at any time revoke a licence issued by it, or may require, as a condition of continuing to hold such licence, the holder thereof to furnish a fresh medical certificate in Form C as set forth in the First Schedule signed as required by sub-section (3) of section 7, if the licensing authority has reasonable grounds to believe that the holder of the licence is, by virtue of any disease or disability, unfit to drive a motor vehicle.

Orders refusing or revoking licences and appeals therefrom.

13. (1) Where the licensing authority refuses to issue or revokes or refuses to renew any licence, it shall do so by an order communicated to the applicant or the holder, as the case may be, giving the reasons in writing for such refusal or revocation.

(2) Any person aggrieved by the refusal of a licensing authority to grant or renew a licence, or by the revocation of a licence may, within thirty days of the service on him of the order of such refusal or revocation, appeal to the prescribed authority, who shall decide the appeal after giving the licensing authority an opportunity of being heard, and the decision of the appellate authority shall be binding on the licensing authority.

(3) The order of a licensing authority shall, unless the appellate authority, conditionally or unconditionally, directs otherwise, be in force pending the disposal of an appeal under sub-section (2).

Notes.

Notes on Clauses :—Clause (2) provides the necessary check upon irregular or arbitrary use of power by licensing authorities.

Clause (1)—In the original Bill sub-clause (1) stood as follows: "Where the licensing authority refuses to issue or revokes or refuses to renew any licence, it shall furnish the applicant or the holder, as the case may be, with reasons in writing for such refusal or revocation" In the Legislative Assembly the Honourable Sir Manmatha Nath Mukherjee moved "That in sub-clause (1) of clause 13 of the Bill, for the words 'furnish the applicant or the holder, as the case may be, with' the words 'do so by an order communicated to the applicant of the holder, as the case may be, giving the' be substituted." In moving the amendment the Honourable Member said "I may explain to the House the object of this proposed amendment So far as clause 13 is concerned, we have provided that the order of revocation or refusal of a licence should contain the reasons therefor, and we have also given in sub-clause (2) of clause 13 the right of appeal within thirty days of such refusal or revocation Objection may rightly be taken, and indeed has been taken, on the ground that it may be that the order may not have been served upon the applicant within a reasonable time, in which case the time taken for the service of the order on the applicant ought to be deducted from the period allowed for preferring the appeal Now in order to meet these difficulties, we have tabled this amendment which will make the clause read thus: "13 (1) Where the licensing authority refuses to issue or revokes or refuses to renew any license, it shall do so by an order communicated to the applicant or the holder, as the case may be, giving the reasons in writing for such refusal or revocation" So that the refusal or revocation will consist not merely in the passing of the order and giving the reasons therefor, but also in communicating the order to the applicant That will remove all difficulties and I submit that this House should accept the amendment" The motion was adopted. *Vide*, page 1135, Legislative Assembly Debates Vol V., No. 5 dated 1-9-'38.

Right of appeal:—This section corresponds to section 5, sub-section (5) of The Road Traffic Act, 1930 (20 & 21 Geo 5, c 43) which has been quoted under sec 20 In connection with this sub-section Mr. F. Llewellyn Jones observes "The question may arise whether a person, who has applied for a full licence and who has only been granted a partial licence, can appeal. It is submitted that he can, as there is a refusal on the part of the licensing authority to grant the licence

asked for. The same consideration would apply in the case of the revocation of a full licence and the substitution of a partial licence." *Vide*, page 80 of his book on the Road Traffic Law. These observations apply, with equal force, to the provisions of section 13 of this Act.

Clause (2) —In this clause the Select Committee inserted a period of limitation for the making of an appeal, removed the reference to District Magistrates and Presidency Magistrates as appellate authorities, and provided that the appellate authority should be determined by the Provincial Government

The words "who shall decide appeal , licensing authority" at the end of clause (2) were inserted on the motion of the Honourable Mr K. G Mitchell in the Council of State merely by way of a drafting improvement. *Vide*, page 199, Council of State Debates, Vol. I – No 5 dated 30, 1-39.

Clause (3).—This provision was introduced during the debates in the Legislative Assembly, and an improvement was made on its drafting during the debates in the Council of State, in order to vest the appellate authority with powers to stay orders of the licensing authority, pending the disposal of the appeal

Licences to drive motor vehicles, the property of the Central Government.

14. (1) The authority specified in Part A of the Fourth Schedule may grant licences, valid throughout British India, to persons who have completed their eighteenth year to drive motor vehicles which are the property of the Central Government.

(2) A licence issued under this section shall specify the class or classes of vehicle which the holder is entitled to drive and the period for which he is so entitled.

(3) A licence issued under this section shall not entitle the holder to drive any motor vehicle except a motor vehicle which is the property of the Central Government.

(4) The authority issuing any licence under this section shall at the request of any Provincial Government furnish such information respecting any person to whom a licence is issued as that Government may at any time require.

Notes.

Notes on clauses:—The intention of this is to continue and regularise the present arrangement under which Army and Air Force drivers are licensed by Army and Air Force Authorities. This is done at present by a long standing agreement with Provincial Governments, who have tacitly accepted the arrangement or formally granted exemption under Section 13 of the existing Act of 1914 The holders of these licences will however be subject to the ordinary law (including punishment by Courts, suspension and endorsement of licence) and in addition will not be enabled by the licences to drive any vehicle other than one owned by the Central Government.

15. (1) If a licensing authority is satisfied after giving him an opportunity of being heard that any person—

(a) is a habitual criminal or a habitual drunkard, or

(b) is using or has used a motor vehicle in the commission of a cognisable offence, or

(c) has by his previous conduct as driver of a motor vehicle shown that his driving is likely to be attended with danger to the public,

it may, for reasons to be recorded in writing, make an order disqualifying that person for a specified period for holding or obtaining a licence.

(2) Upon the issue of any such order a person affected, if he is the holder of a

licence, shall forthwith surrender his licence to the licensing authority making the order, if the licence has not already been surrendered, and the licensing authority shall—

(a) if the licence is a licence issued under this Act, keep it until the disqualification has expired or has been removed, or

(b) if it is not a licence issued under this Act, endorse the disqualification upon it and send it to the licensing authority by which it was issued.

(3) Any person aggrieved by an order made by a licensing authority under this section may, within thirty days of the receipt of the order, appeal to the prescribed authority, and such appellate authority shall give notice to the licensing authority and hear either party if so required by that party and may make such inquiry into the matter as it thinks fit. An order made by any such appellate authority shall be final.

Notes.

Notes on clauses :—This repeats, in form amplified to meet present requirements, the provision in section 18(1) of the existing Act (*i.e.*, Act VIII of 1914)

Changes made by the Select Committee :—This section has been recast by the Select Committee, so as to state specifically the reasons for which a disqualification under this section may be ordered, and the power of disqualification has been given to the licencing authority instead of to the Provincial Government. A right of appeal against any such order is also given.

Clause (1).—During the debates in the Legislative Assembly the words "after giving him an opportunity of being heard" were introduced in this clause with a view to avoid passing orders in such serious matters as in this clause without hearing the person concerned

In clause (a) the words "or a habitual drunkard" were added to put a restriction upon habitual drunkards who are never proper persons to drive a motor vehicle.

Cognisable offence.—This has been defined in section 4, clause (1), sub-clause (f) of the Criminal Procedure Code which runs as follows: 'Cognizable offence' means an offence for, and 'cognizable case' means a case in which a Police-Officer, within or without the Presidency-towns, may, in accordance with the second schedule, or under any law for the time being in force, arrest without warrant."

16. (1) A Regional Transport Authority constituted under Chapter V may for reasons to be recorded in writing and subject to any prescribed conditions declare any person disqualified, for a specified period, for holding or obtaining a licence to drive a public service vehicle in the province. Power of Regional Transport Authority to disqualify

(2) Any person aggrieved by an order of a Regional Transport Authority made under sub-section (1) may within thirty days of the receipt of intimation of such order appeal against the order to the prescribed authority.

Notes.

Notes on Clauses:—Transport authorities are responsible for seeing that public service vehicles are run in the best interests of and to the safety of the travelling public. It seems only reasonable therefore that they should have a deciding word as to the persons by whom public service vehicles are driven.

Changes made by the Select Committee.—The Select Committee has provided that reasons are to be stated for a disqualification made under this section, and that the disqualification shall be for a specified period only. It has also provided for an appeal.

Clause (2).—During the debates in the Legislative Assembly the words "of the receipt of intimation of such orders" have been substituted for the words "of the making of such order," because a person must have notice before he can appeal against the order.

licence, shall forthwith surrender his licence to the licensing authority making the order, if the licence has not already been surrendered, and the licensing authority shall—

(a) if the licence is a licence issued under this Act, keep it until the disqualification has expired or has been removed, or

(b) if it is not a licence issued under this Act, endorse the disqualification upon it and send it to the licensing authority by which it was issued.

(3) Any person aggrieved by an order made by a licensing authority under this section may, within thirty days of the receipt of the order, appeal to the prescribed authority, and such appellate authority shall give notice to the licensing authority and hear either party if so required by that party and may make such inquiry into the matter as it thinks fit. An order made by any such appellate authority shall be final.

Notes.

Notes on clauses :—This repeats, in form amplified to meet present requirements, the provision in section 18(1) of the existing Act (i e., Act VIII of 1914).

Changes made by the Select Committee :—This section has been recast by the Select Committee, so as to state specifically the reasons for which a disqualification under this section may be ordered, and the power of disqualification has been given to the licencing authority instead of to the Provincial Government. A right of appeal against any such order is also given.

Clause (1)—During the debates in the Legislative Assembly the words "after giving him an opportunity of being heard" were introduced in this clause with a view to avoid passing orders in such serious matters as in this clause without hearing the person concerned.

In clause (a) the words "or a habitual drunkard" were added to put a restriction upon habitual drunkards who are never proper persons to drive a motor vehicle.

Cognisable offence:—This has been defined in section 4, clause (1), sub-clause (f) of the Criminal Procedure Code which runs as follows: 'Cognizable offence' means an offence for, and 'cognizable case' means a case in which a Police-Officer, within or without the Presidency-towns, may, in accordance with the second schedule, or under any law for the time being in force, arrest without warrant"

16. (1) A Regional Transport Authority constituted under Chapter V may for reasons to be recorded in writing and subject to any prescribed conditions declare any person disqualified, for a specified period, for holding or obtaining a licence to drive a public service vehicle in the province. Power of Regional Transport Authority to disqualify

(2) Any person aggrieved by an order of a Regional Transport Authority made under sub-section (1) may within thirty days of the receipt of intimation of such order appeal against the order to the prescribed authority.

Notes.

Notes on Clauses:—Transport authorities are responsible for seeing that public service vehicles are run in the best interests of and to the safety of the travelling public. It seems only reasonable therefore that they should have a deciding word as to the persons by whom public service vehicles are driven.

Changes made by the Select Committee —The Select Committee has provided that reasons are to be stated for a disqualification made under this section, and that the disqualification shall be for a specified period only. It has also provided for an appeal.

Clause (2):—During the debates in the Legislative Assembly the words "of the receipt of intimation of such orders" have been substituted for the words "of the making of such order," because a person must have notice before he can appeal against the order.

Power of Court to disqualify

17. (1) Where a person is convicted of an offence under this Act, or of an offence in the commission of which a motor vehicle was used, the Court by which such person is convicted may, subject to the provisions of this section, in addition to imposing any other punishment authorised by law, declare the person so convicted to be disqualified for such period as the Court may specify, for holding any licence or for holding a licence to drive a particular class or description of vehicle.

(2) A Court shall not order the disqualification of an offender convicted for the first or second time of an offence punishable under section 115.

(3) A Court shall order the disqualification of an offender convicted of an offence punishable under section 117, and such disqualification shall be for a period of not less than six months.

(4) A Court shall order the disqualification of an offender convicted of an offence against the provisions of clause (c) of sub-section (1) of section 87 or of section 89, and such disqualification shall be for a period of not less than one month.

(5) A Court shall, unless for special reasons to be recorded in writing it thinks fit to order otherwise, order the disqualification of an offender—

(a) who having been convicted of an offence punishable under section 116 is again convicted of an offence punishable under that section,

(b) who is convicted of an offence punishable under section 120, or

(c) who is convicted of an offence punishable under section 123 :

Provided that the period of disqualification shall not exceed, in the cases referred to in clauses (a) and (b), two years, or, in the case referred to in clause (c), one year.

(6) A Court ordering the disqualification of an offender convicted of an offence punishable under section 116 may direct that the offender shall, whether he has previously passed the test of competence to drive spefied in the Third Schedule or not, remain disqualified until he has subsequent to the making of the order of disqualification passed that test to the satisfaction of the licensing authority.

(7) The Court to which an appeal lies from any conviction of an offence of the nature specified in sub-section (1) may set aside or vary any order of disqualification made by the Court below, and the Court to which appeals ordinarily lie from any Court may set aside or vary any order of disqualification made by that Court, notwithstanding that no appeal lies against the conviction in connection with which such order was made.

Notes

Notes on Clauses .—*Some Provincial Governments have* made rules under sec. 18 (IA) of the Indian Motor Vehicles Act, 1914, delegating to licensing authorities power to suspend or cancel licences. Since disqualification is a severe punishment it is considered more satisfactory to leave its infliction to the decision of the Court, after a proper trial The offences themselves, however, are grouped in two categories those for which disqualification should be obligatory, and those for which disqualification may be left to the discretion of the Court.

Changes made by the Select Committee :—The word "or otherwise in relation to a motor vehicle, or the driving of a motor vehicle" were omitted from clause (1) as they were considered to be unnecessary and dangerously wide. The verbal change in clauses (2) and (3) is for clarity only. The Select Committee omitted clause (4) of this section as given in the Bill, considering that it would be unfair to penalize the driver of an uninsured vehicle in many cases, as the primary responsibility for insuring the vehicle rests on the owner. It also omitted clause (9) which applied the provisions of this section to abetments of certain offences. By amendment of clause (10) of the Bill [*i.e*, now clause (7) of this section], it deprived the Appellate Court of power to make an order of disqualification which the lower Court did not see fit to make. In the Legislative Assembly an amendment was moved to vest the Appellate Court with such powers but it was negatived *Vide*, Legislative Assembly Debates, dated 1-9-38., Vol V, No. 5.

Stay :—The Appellate Court has been given powers, by clause (2) of section 18, to make an order suspending the operation of the order of disqualification, pending the hearing of the appeal.

Appeal —In the case of convictions under the Motor Vehicles Act (VIII of 1914), in many cases an order of suspension of a driving licence is a much more serious part of the punishment than a sentence of fine It is a part of the sentence. So the sentence of fine, coupled with an order of suspension of the driving licence, is always an appealable sentence, exceptions contained in sections 413 and 414 of the Cr. P. Code being not applicable to such a case *Garanand Singh* v. *Emperor*, A. I. R. 1933 Rang. 329 = 1933 Cr. C. 1146 = 146 I. C. 545 = 35 Cr. L. J. 116. This view of law seems to be against the wording of clause (7) of this section which provides for appeal against an order of disqualification in cases where no appeal lies against the conviction in connection with which such order was made There was no necessity of making this provision if an appeal lay in all cases in which an order of disqualification was passed

See notes given under the heading "Licensed driver driving without license on his body" under sec. 112 and also notes under sec 132

Revision :—In a case where over and above the sentence of a fine inflicted upon a motor driver, his licence is suspended

the order of suspension is subject of revision by the superior Court. *Dhekia* v. *Emperor,* 65 I. C. 125 = 23 Cr. L. J. 73 = A. I R. 1922 Nag. 71.

Order of disqualification :—The only way to stop an accident due to a dangerous driving of motor vehicles is for the Court to take a deterrent measure by temporarily suspending the licence The matter will be endorsed on the licence itself and it will caution the offender that he must be careful in the future. *Emperor* v. *Barappa,* (1925) 27 Bom. L. R. 1056 = A. I. R. 1925 Bom 526 = 90 I. C 320

In a Patna case in which a motor lorry which was overloaded, the permit was suspended for a period of four months for such overloading It was held by the Patna High Court that the Motor Vehicles Act, sec 18, clause 2 read with Patna Motor Vehicle Rule No XXXXI does not empower the Magistrate to suspend the permit for overloading. Accordingly the suspension order was set aside *Sheodatt Roy* v *Emperor,* A. I R. 1929 Pat. 64 = 29 Cr. L J. 771 = 110 I. C 803 = 10 P L. T. 429

18. (1) A person in respect of whom any disqualification order is made shall be debarred to the extent and for the period specified in such order from holding or obtaining a licence and the licence, if any, held by such person at the date of the order shall cease to be effective during such period. Effect of disqualification order.

(2) The operation of a disqualification order made under section 17 shall not be suspended or postponed while an appeal is pending against such order or against the conviction as a result of which such order is made, unless the appellate Court so directs.

(3) Any person in respect of whom any disqualification order has been made may at any time after the expiry of six months from the date of the order apply to the Court or other authority by which the order was made, to remove the disqualification ; and the Court or authority, as the case may be,

may, having regard to all the circumstances, either remove or vary the order of disqualification :

Provided that where an application has been made under this section a second application thereunder shall not be entertained before the expiry of a further period of three months.

Notes.

Changes made by the Select Committee :—The Select Committee transferred to the Appellate Court the power to stay an order of disqualification pending appeal, substituting the words "Appellate Court" in place of the words "Court making the order" in clause (2) of this section. In clause (3) it removed the reference to conduct of the person disqualified subsequent to the order of disqualification, leaving the decision to be based on general circumstances of which such conduct might be one.

Clause (3) :—This clause does not relate to appeal provided for in section 17, clause (7) which will be governed by the ordinary rules of limitation as provided in the Cr. P. Code. This clause gives another remedy by way of review of the order of disqualification by the original Court or other authority which passed the order, after expiry of six months from the date of such order.

Endorsements.

19. (1) The Court or authority making an order of disqualification shall endorse or cause to be endorsed upon the licence, if any, held by the person disqualified particulars of the order of disqualification and of any conviction of an offence in respect of which an order of disqualification is made ; and particulars of any removal or variation of an order of disqualification made under sub-section (3) of section 18 shall be similarly so endorsed.

(2) A Court by which any person is convicted of an offence specified in the Fifth Sche-

dule shall, whether or not an order of disqualification is made in respect of such conviction, endorse or cause to be endorsed particulars of such conviction on any licence held by the person convicted.

(3) Any person accused of an offence specified in the Fifth Schedule shall when attending the Court bring with him his licence if it is in his possession.

Notes.

Notes on Clauses:—In order to secure a reasonable measure of uniformity in respect of the endorsement of licences, the offences in respect of which the Courts shall be bound to endorse licences are specified in the Fifth Schedule. Licences will therefore invariably be endorsed by the Courts for these offences and by the Courts or other competent authority in respect of any period of disqualification. The offences specified in the Schedule will be those in respect of which endorsement is necessary. Other offences not specified will be of a technical nature and, although no specific provision is made, the intention is that they should not be endorsed.

Transfer of endorsements and issue of licence free from endorsement.

20. (1) An endorsement on any licence shall be transferred to any new or duplicate licence obtained by the holder thereof until the holder becomes entitled under the provisions of this section to have a licence issued to him free from endorsement.

(2) Where a licence is required to be endorsed and the licence is at the time not in the possession of the Court or authority by which the endorsement is to be made then—

(a) if the person in respect of whom the endorsement is to be made is at the time the holder of a licence, he shall produce the licence to the Court or autho-

rity within five days, or such longer time as the Court or authority may fix, or

(b) if, not being then the holder of a licence, he subsequently obtains a licence, he shall within five days after obtaining the licence produce it to the Court or authority; and if the licence is not produced within the time specified it shall on the expiration of such time be of no effect until it is produced for the purpose of endorsement.

(3) A person whose licence has been endorsed shall, if during a continuous period of three years since the last endorsement was made no further order of endorsement has been made against him, be entitled, on surrendering his licence and on payment of a fee of five rupees, to receive a new licence free from all endorsements. If the endorsement was only in respect of exceeding a speed limit, he shall be entitled to have a clean licence issued on the expiration of one year from the date of the order:

Provided that in reckoning the said period of three years and one year, respectively, any period during which the said person was disqualified for holding or obtaining a licence shall be excluded.

(4) When a licence is endorsed by or an order of endorsement is made by any Court, the Court shall send particulars of the endorsement or order, as the case may be, to the licensing authority by which the licence was last renewed and to the licensing authority which granted the licence.

(5) Where the holder of a licence is disqualified by the order of any Court for

holding or obtaining a licence, the Court shall take possession of the licence and forward it to the licensing authority by which it was granted or last renewed and that authority shall keep the licence until the disqualification has expired or has been removed and the person entitled to the licence has made a demand in writing for its return to him :

Provided that, if the disqualification is limited to the driving of a motor vehicle of a *particular class or description*, the Court shall endorse the licence to this effect and shall send a copy of the order of disqualification to the licensing authority by which the licence was granted and shall return the licence to the holder.

(6) Where on an appeal against any conviction or order of a Court which has been endorsed on a licence, the appellate Court varies or sets aside the conviction or order, the appellate Court shall inform the licensing authority by which the licence was last renewed and the licensing authority which granted the licence, and shall amend or cause to be amended the endorsement of such conviction or order.

Notes

Notes on Clauses :—In order to secure uniformity in respect of the issue of a clean licence after three years' clean driving, in conformity with the views expressed by the majority of Provincial Governments, it is proposed that in the Schedule specifying offences, convictions in respect of which are to be endorsed on licences, shall be divided into two parts—Part A will contain the more serious offences, endorsement in respect of which should never be expunged and must be repeated on any new licence issued, and Part B will specify the offences the endorsements in respect of which can be expunged after

three years' clean period of driving. Thus, in the event of any person being prosecuted for an offence under this Act, his licence will furnish a record of all previous convictions of a serious nature as well as recent convictions of a less serious nature, and upon demand by the prosecution for the disqualification of the holder the Courts may normally be expected to disqualify a habitual offender. The power of licensing authorities to disqualify will therefore not be as necessary as it is held to be at present.

Sub-section (3) of this section, however, does not make any distinction between offences mentioned in Part A and Part B of the Fifth Schedule regarding issue of licence free from endorsement in respect of the same.

Changes made by the Select Committee.—The change made in clause (3) of this section liberalises its provisions and follows the provisions of the English Law (i.e. section 8 cl. (5) of the Road Traffic Act, 1930, quoted below). The changes made in clauses (4) and (6) are little more than formal, and are self-explanatory.

English Law:—The provisions of English Law regulating grant, cancellation, suspension or disqualification of a license can be found in sections 5, 6, 7 and 8 of the Road Traffic Act, 1930 (20 & 21 Geo. 5, c. 43) which, as amended by the Road Traffic Act, 1934, run as follows :—

Provisions as to physical fitness of applicants for licences.

5.—(1) On an application for the grant of a licence the applicant shall make a declaration in the prescribed form as to whether or not he is suffering from any such disease or physical disability as may be specified in the form, or any other disease or physical disability which would be likely to cause the driving by him of a motor vehicle, being a vehicle of such a class or description as he would be authorised by the licence to drive, to be a source of danger to the public.

(2) If from the declaration it appears that the applicant is suffering from any such disease or disability as aforesaid, the licensing authority shall refuse to grant the licence :

Provided that—

(a) a licence limited to driving an invalid carriage may be granted to the applicant if the licensing authority are satisfied that he is fit to drive such a carriage ;

(b) the applicant may, except in the case of such diseases and disabilities as may be prescribed, on payment of the prescribed fee, claim to be subjected to a test as to his fitness or ability to drive a motor vehicle of any such class or description as he would be authorised by the licence to drive, and if he passes the prescribed test and is not otherwise disqualified, the licence shall not be refused by reason only of the provisions of this sub-section so, however, that if the test proves his fitness to drive vehicles of a particular construction or design only, the licence shall be limited to the driving of such vehicles ,

(c) if on the first application for the grant of a licence by a person who at the commencement of this Act is the holder of a driver's licence under the Motor Car Act, 1903, an applicant who is suffering from a disease or disability other than a disease or disability prescribed as aforesaid makes a declaration that notwithstanding his disease or disability he has during the six months immediately preceding the application been in the habit of driving a motor vehicle of any such class or description as he would be authorised by the licence to drive and that the disease or disability from which he suffered did not cause the driving of such a motor vehicle by him to be a source of danger to the public, the licence shall not be refused by reason only of the provisions of this sub-section ,

(d) if on the application for the grant of a licence the applicant makes a declaration that on the occasion of a previous application by him a licence was granted to him after passing such a test as aforesaid, or making such a declaration as is mentioned in the last preceding proviso, a further test shall not be required, unless from the declaration as to physical fitness made by him for the purposes of his application, of from information received by the licensing authority, it appears that the disease or physical disability from which the applicant is suffering has become more acute, or that the applicant is suffering from some disease or disability not disclosed on the previous occasion or contracted since that occasion

(3) For the purpose of enabling the applicant for the grant of a licence to learn to drive a motor vehicle with a view to passing a test under this section, the licensing authority may, if so requested by him and on payment of a fee of five

three years' clean period of driving. Thus, in the event of any person being prosecuted for an offence under this Act, his licence will furnish a record of all previous convictions of a serious nature as well as recent convictions of a less serious nature, and upon demand by the prosecution for the disqualification of the holder the Courts may normally be expected to disqualify a habitual offender The power of licensing authorities to disqualify will therefore not be as necessary as it is held to be at present.

Sub-section (3) of this section, however, does not make any distinction between offences mentioned in Part A and Part B of the Fifth Schedule regarding issue of licence free from endorsement in respect of the same

Changes made by the Select Committee·—The change made in clause (3) of this section liberalises its provisions and follows the provisions of the English Law (i.e section 8 cl (5) of the Road Traffic Act, 1930, quoted below). The changes made in clauses (4) and (6) are little more than formal, and are self-explanatory.

English Law —The provisions of English Law regulating grant, cancellation, suspension or disqualification of a license can be found in sections 5, 6, 7 and 8 of the Road Traffic Act, 1930 (20 & 21 Geo. 5, c 43) which, as amended by the Road Traffic Act, 1934, run as follows .—

Provisions as to physical fitness of applicants for licences.

5.—(1) On an application for the grant of a licence the applicant shall make a declaration in the prescribed form as to whether or not he is suffering from any such disease or physical disability as may be specified in the form, or any other disease or physical disability which would be likely to cause the driving by him of a motor vehicle, being a vehicle of such a class or description as he would be authorised by the licence to drive, to be a source of danger to the public.

(2) If from the declaration it appears that the applicant is suffering from any such disease or disability as aforesaid, the licensing authority shall refuse to grant the licence :

Provided that—

(a) a licence limited to driving an invalid carriage may be granted to the applicant if the licensing authority are satisfied that he is fit to drive such a carriage ;

(b) the applicant may, except in the case of such diseases and disabilities as may be prescribed, on payment of the prescribed fee, claim to be subjected to a test as to his fitness or ability to drive a motor vehicle of any such class or description as he would be authorised by the licence to drive, and if he passes the prescribed test and is not otherwise disqualified, the licence shall not be refused by reason only of the provisions of this sub-section so, however, that if the test proves his fitness to drive vehicles of a particular construction or design only, the licence shall be limited to the driving of such vehicles,

(c) if on the first application for the grant of a licence by a person who at the commencement of this Act is the holder of a driver's licence under the *Motor Car Act, 1903*, an applicant who is suffering from a disease or disability other than a disease or disability prescribed as aforesaid makes a *declaration that notwithstanding his disease or* disability he has during the six months immediately preceding the application been in the habit of driving a motor vehicle of any such class or description as he would be authorised by the licence to drive and that the disease or disability from which he suffered did not cause the driving of such a motor vehicle by him to be a source of danger to the public, the licence shall not be refused by reason only of the provisions of this sub-section.

three years' clean period of driving. Thus, in th[illegible] person being prosecuted for an offence under th[illegible] licence will furnish a record of all previous con[illegible] serious nature as well as recent convictions of a [illegible] nature, and upon demand by the prosecution for the di[illegible]fication of the holder the Courts may normally h[illegible] to disqualify a habitual offender The power of [illegible] authorities to disqualify will therefore not be as nece[illegible] it is held to be at present

Sub-section (3) of this section, however, does not make [illegible] distinction between offences mentioned in Part A and Part [illegible] of the Fifth Schedule regarding issue of licence free from endorsement in respect of the same

Changes made by the Select Committee —The change made in clause (3) of this section liberalises its provisions and follows the provisions of the English Law (*i.e.* section 8 cl. (5) of the Road Traffic Act, 1930, quoted below). The changes made in clauses (4) and (6) are little more than formal, and are self-explanatory

English Law —The provisions of English Law regulating grant, cancellation, suspension or disqualification of a license can be found in sections 5, 6, 7 and 8 of the Road Traffic Act, 1930 (20 & 21 Geo. 5, c. 43) which, as amended by the Road Traffic Act, 1934, run as follows :—

Provisions as to physical fitness of applicants for licences.

5.—(1) On an application for the grant of a licence the applicant shall make a declaration in the prescribed form as to whether or not he is suffering from any such disease or physical disability as may be specified in the form, or any other disease or physical disability which would be likely to cause the driving by him of a motor vehicle, being a vehicle of such a class or description as he would be authorised by the licence to drive, to be a source of danger to the public.

(2) If from the declaration it appears that the applicant is suffering from any such disease or disability as aforesaid, the licensing authority shall refuse to grant the licence :

Provided that—

(a) a licence limited to driving an invalid carriage may be granted to the applicant if the licensing authority are satisfied that he is fit to drive such a carriage ;

(b) the applicant may, except in the case of such diseases and disabilities as may be prescribed, on payment of the prescribed fee, claim to be subjected to a test as to his fitness or ability to drive a motor vehicle of any such class or description as he would be authorised by the licence to drive, and if he passes the prescribed test and is not otherwise disqualified, the licence shall not be refused by reason only of the provisions of this sub-section so, however, that if the test proves his fitness to drive vehicles of a particular construction or design only, the licence shall be limited to the driving of such vehicles ;

(c) if on the first application for the grant of a licence by a person who at the commencement of this Act is the holder of a driver's licence under the Motor Car Act, 1903, an applicant who is suffering from a disease or disability other than a disease or disability prescribed as aforesaid makes a declaration that notwithstanding his disease or disability he has during the six months immediately preceding the application been in the habit of driving a motor vehicle of any such class or description as he would be authorised by the licence to drive and that the disease or disability from which he suffered did not cause the driving of such a motor vehicle by him to be a source of danger to the public, the licence shall not be refused by reason only of the provisions of this sub-section ;

(d) if on the application for the grant of a licence the applicant makes a declaration that on the occasion of a previous application by him a licence was granted to him after passing such a test as aforesaid, or making such a declaration as is mentioned in the last preceding proviso, a further test shall not be required, unless from the declaration as to physical fitness made by him for the purposes of his application, or from information received by the licensing authority, it appears that the disease or physical disability from which the applicant is suffering has become more acute, or that the applicant is suffering from some disease or disability not disclosed on the previous occasion or contracted since that occasion

(3) For the purpose of enabling the applicant for the grant of a licence to learn to drive a motor vehicle with a view to passing a test under this section, the licensing authority may, if so requested by him and on payment of a fee of five

shillings, grant him a provisional licence to be in force for a period of three months, which licence shall be in the prescribed form and granted subject to the prescribed conditions.

If any person to whom such a provisional licence is granted fails to comply with any of the conditions subject to which it is granted, he shall be guilty of an offence.

(4) If it appears to a licensing authority that there is a reason to believe that any person who holds a licence granted by him is suffering from a disease or physical disability likely to cause driving by him of a motor vehicle, being a vehicle of any such class or description as he is authorised by the licence to drive, to be a source of danger to the public, and on inquiry into the matter the authority are satisfied that the licence holder is suffering from such a disease or disability as aforesaid, then, whether or not the licence holder so suffering as aforesaid has previously passed a test under this section, the licensing authority may, after giving to the licence holder notice of their intention so to do, revoke the licence and the licence holder shall, on receipt of such notice, deliver the licence to the licensing authority for cancellation :

Provided that the licence holder may, except in the case of such diseases and disabilities as may be prescribed, claim to be subjected to a test as to his fitness or disability to drive a motor vehicle, and if he passes the prescribed test the licence shall not be revoked.

(5) If any person is aggrieved by the refusal of a licensing authority to grant a licence or by the revocation of a licence under this section, he may, after giving to the authority notice of his intention so to do, appeal to a court of summary jurisdiction acting for the petty sessional division in which the said person resides, and on any such appeal the court may make such order as it thinks fit, and any order so made shall be binding on the licensing authority.

Disqualification for offences and endorsement of convictions.

6.—(1) Any court before which a person is convicted of any criminal offence in connection with the driving of a motor vehicle (not being an offence under Part IV of this Act)—

(a) may in any case, except where otherwise expressly provided by this Part of this Act, and shall where so required by this Part of this Act, order him to be disqualified for holding or obtaining a licence for such period as the court thinks fit; and

(b) may in any case, and shall where a person is by virtue of a conviction disqualified for holding or obtaining a licence, or where an order so disqualifying any person is made or where so required by this Part of this Act, order that particulars of the conviction and of any disqualification to which the convicted person has become subject shall be endorsed on any licence held by the offender.

Provided that, if the court thinks fit, any disqualification imposed under this section may be limited to the driving of a motor vehicle of the same class or description as the vehicle in relation to which the offence was committed.

(2) A person who by virtue of an order of a court under this Part of this Act is disqualified for holding or obtaining a licence may appeal against the order in the same manner as against a conviction, and the court may, if it thinks fit, pending the appeal, suspend the operation of the order.

7.—(1) Where a person who is disqualified by virtue of a conviction or order under this Part of this Act is the holder of a licence, the licence shall be suspended so long as the disqualification continues in force. Provisions as to disqualifications and suspensions.

(2) A licence suspended by virtue of this Part of this Act shall during the time of suspension be of no effect.

(3) A person who by virtue of a conviction or order under this Part of this Act is disqualified for holding or obtaining a licence, may, at any time after the expiration of six months from the date of the conviction or order, and from time to time apply to the court before which he was convicted or by which the order was made to remove the disqualification, and on any such application the Court may, as it thinks proper, having regard to the character of the person disqualified and his subsequent conduct to the conviction or order, the nature of the offence, and any other circumstances of the case, either by order remove the disqualification as from such date as may be specified in the order or refuse the application.

Provided that, where an application under this sub-section is refused, a further application thereunder shall not be entertained if made within three months after the date of the refusal.

If the Court orders a disqualification to be removed, the Court shall cause particulars of the order to be endorsed on the

licence, if any, previously held by the applicant and the Court shall in any case have power to order the applicant to pay the whole or any part of the costs of the application.

(4) If any person who under the provisions of this Part of this Act is disqualified for holding or obtaining a licence applies for or obtains a licence while he is so disqualified, or if any such person while he is so disqualified drives a motor vehicle, or, if the disqualification is limited to the driving of a motor vehicle of a particular class or description, a motor vehicle of that class or description, on a road, that person shall be liable on summary conviction to imprisonment for a term not exceeding six months or if the court thinks that, having regard to the special circumstances of the case, a fine would be an adequate punishment for the offence, to a fine not exceeding fifty pounds, or to both such imprisonment and such fine and a licence obtained by any person disqualified as aforesaid shall be of no effect.

(5) Notwithstanding any enactment prescribing the time within which proceedings may be brought before a court of summary jurisdiction, proceedings for an offence under subsection (4) of this section may be brought—

(a) within a period of six months from the date of the commission of the alleged offence ,

(b) within a period which exceeds neither three months from the date on which it came to the knowledge of the prosecutor that the offence had been committed nor one year from the date of the commission of the offence ;

whichever period is the longer.

(6) For the purposes of this section, references to orders and convictions under this Part of this Act include references to orders and convictions under the corresponding provisions of any enactment repealed by this Act

Provisions as to endorsements.

8. (1) An order that the particulars of any conviction or of any disqualification to which the convicted person has become subject are to be endorsed on any licence held by the offender shall, whether the offender is at the time the holder of a licence or not, operate as an order that any licence he may then hold or may subsequently obtain, shall be so endorsed until he becomes entitled under the provisions of this section to have a licence issued to him free from endorsement.

(2) Where an order is made requiring any licence held by an offender to be endorsed, then—

(a) if the offender is at the time the holder of a licence, he shall, if so required by the Court, produce the licence within five days or such longer time as the court may determine for the purpose of endorsement, and

(b) if he is not then a holder of licence, but subsequently obtains a licence, he shall within five days after so obtaining the licence produce it to the Court for the purpose of endorsement,

and if he fails to do so, he shall be guilty of an offence, and if the licence is not produced for the purpose of endorsement within such time as aforesaid, it shall be suspended from the expiration of such time until it is produced for the purpose of endorsement.

(3) On the issue of a new licence to any person, the particulars endorsed on any previous licence held by him shall be copied on to the new licence unless he has previously become entitled under the provisions of this section to have a licence issued to him free from endorsements.

(4) If any person whose licence has been ordered to be endorsed and who has not previously become entitled under the provisions of this section to have a licence issued to him free from endorsement applies for or obtains a licence without giving particulars of the order, he shall be liable on a summary conviction to imprisonment for a term not exceeding six months or to a fine, and any licence so obtained shall be of no effect

*(5) Where an order has been made in respect of a person under this Part of this Act, or the corresponding provisions of any Act repealed by this Act, requiring the endorsement of any licence held by him, he shall be entitled, either on applying for the grant of a licence under this Part of this Act, or, subject to a payment of a fee of five shillings, and subject to surrender of any subsisting licence on application at any time, to have issued to him a new licence free from endorsements—

(a) if he has, during a continuous period of three years or upwards since the order was made, had no such order made against him, or no such order other than an order made more than one year before the date of his application and by

reason only of a conviction for the offence of driving a motor vehicle at a speed exceeding a speed limit ;

or (b) where the order was made by reason only of such a conviction as aforesaid and immediately before the order was made he was the holder of, or was entitled to have issued to him, a licence free from any endorsement or free from any endorsement except of particulars in relation to such a conviction as aforesaid, if he has during a continuous period of one year or upwards since the order was made had no order requiring endorsement made against him .

Provided that in reckoning the said continuous periods of three years and one year respectively, any period during which the applicant was by virtue of the order disqualified for holding or obtaining a licence shall be excluded".

(6) where a court orders particulars to be endorsed on a licence held by any person, or where by a conviction or order of a court a person is disqualified for holding or obtaining a licence, the court shall send notice of the conviction or order to the licensing authority by which the licence was granted and to the licensing authority in whose area that person resides, and, in case where a person is so disqualified, shall also on the production of the licence for the purpose of endorsement retain the licence and forward it to the authority by which it was granted, and that authority shall keep the licence until the disqualification has expired or been removed and the person entitled to the licence has made a demand in writing for its return to him.

When the disqualification to which a person has become subject is limited to the driving of a motor vehicle of a particular class or description, the licensing authority to whom that person's licence has been forwarded under this sub-section shall forthwith after the receipt thereof issue to that person a new licence on which there shall be indicated in the prescribed manner the class or description of vehicle which the holder of the licence is not thereby authorised to drive, and the licence so issued shall remain in force either for the unexpired period of the original licence or for the period of disqualification, whichever is the shorter.

(7) Where on an appeal against any such order the appeal is allowed, or where any such conviction is quashed, the court by which the appeal is allowed or the conviction is quashed

shall send notice thereof to the licensing authority in whose area the person affected by the order or conviction resides and to the authority who issued the licence.

Section 6 of the Road Traffic Act, 1934, which relates to the same matter, runs as follows :—

6 (1) A licence to drive a motor vehicle shall not be granted under Part I of the principal Act to any applicant unless he satisfies the licensing authority that he has either—

Tests of competence to drive of new applicants for licences and of offenders ordered to be tested.

(a) at some time passed the prescribed test of competence to drive ; or

(b) at some time before the first day of April, nineteen hundred and thirty-four, held such a licence, or a driver's licence under the Motor Car Act, 1903, authorising him to drive vehicles of the class or description which he would be authorised by the licence applied for to drive

3 Ed. 7c 36

(2) The provisions of sub-section (3) of section five of the principal Act (which relates to the grant of provisional licences for the purpose of enabling persons to learn to drive a motor vehicle with a view to passing a test under that section) shall have effect as if the reference therein to a test included a reference to a test for the purposes of this section

(3) The court before which a person is convicted of an offence under section eleven of the principal Act (which relates to reckless or dangerous driving), or under section twelve of the principal Act (which relates to careless driving), may, whether he has previously passed the prescribed test of competence to drive or not and whether or not the court makes an order under section six of the principal Act disqualifying him for holding or obtaining a licence to drive a motor vehicle, order him to be disqualified for holding or obtaining a licence to drive a motor vehicle until he has, since the date of the order, passed that test.

(4) The provisions of the principal Act which have effect where an order disqualifying a person for holding or obtaining a licence is made shall have effect in relation to a disqualification by virtue of an order under this section subject to the following modifications—

(a) notwithstanding the provisions of sub-section (6) of section four, or of sub-section (4) of section seven, the person

disqualified shall (unless he is disqualified for holding or obtaining a licence otherwise than by virtue of an order under this section) be entitled to obtain and to hold a provincial licence to be granted (where the person disqualified is the holder of a licence, by the licensing authority by which that licence was granted) under sub-section (3) of section five of the principal Act, and to drive a motor vehicle in accordance with the conditions subject to which the provisional licence is granted,

(b) sub-section (3) of section seven (which relates to applications to the court to remove disqualifications) shall not apply, but the disqualification shall be deemed to have expired on production to the licensing authority of evidence in the prescribed form that the person disqualified has, since the order was made, passed the prescribed test ;

(c) on the return to the person disqualified of any licence to drive a motor vehicle held by him, or on the issue to him of such a licence, there shall be added to the endorsed particulars of the disqualification a statement that the person disqualified has, since the order was made, passed the prescribed test

(5) The Minister may make regulations with respect to the nature of tests of competence to drive for the purposes of this section, to the qualifications, selection and appointment of persons by whom they may be conducted and to the revocation of any appointment, to evidence of the results thereof and generally with respect thereto, and in particular, but without prejudice to the generality of the foregoing provisions, regulations made under this section may provide—

(a) for requiring a person submitting himself for a test to provide a vehicle for the purposes thereof,

(b) for requiring a person submitting himself for a test to pay to the person conducting the test such fee, not exceeding ten shillings, as may be specified in the regulations ;

(c) for ensuring that a person submitting himself for a test and failing to pass that test shall not be eligible to submit himself to another test by the same or any other person before the expiration of a prescribed period, except under an order made by a court of summary jurisdiction under the power conferred by the next succeeding sub-section ;

and different regulations may be made with respect to tests of competence to drive different classes or descriptions of vehicles.

(6) A court of summary jurisdiction acting for the petty sessional division in which a person who has submitted himself for a test of competence to drive resides shall have power on the application of that person to determine whether the test was properly conducted in accordance with the regulations and, if it appears to the court that the test was not so conducted the court may order that the applicant shall be eligible to submit himself to another test before the expiration of the period prescribed for the purposes of paragraph (c) of the last foregoing sub-section, and may order that any fee payable by the applicant in respect of the test shall not be paid or, if it has been paid, shall be repaid.

(7) The Minister may make regulations providing for dispensing, in the case of persons not resident in Great Britain, with the requirements of sub-section (1) of this section

(8) In this section the expression "licence to drive a motor vehicle" means a licence to drive a motor vehicle granted under Part I of the principal Act.

21. (1) A Provincial Government may make rules for the purpose of carrying into effect the provisions of this Chapter. Power to make rules.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the appointment, jurisdiction, control and functions of licensing authorities and other prescribed authorities;

(b) for the conduct and hearing of appeals that may be preferred under this Chapter;

(c) the issue of duplicate licences to replace licences lost, destroyed or mutilated, the replacement of photographs which have

become obsolete, and the issue of temporary licences to persons receiving instruction in driving, and the fees to be charged therefor ;

(d) the conditions subject to which a Regional Transport Authority may disqualify a person for holding a licence to drive a public service vehicle ;

(e) the medical examination and testing of applicants for licences and of drivers and the fees to be charged therefor ;

(f) the refund of fees paid under the provisions of this Act or of any enactment relating to motor vehicles in force in British India at the commencement of this Act ;

(g) the granting by registered medical practitioners of the certificates referred to in sub-section (3) of section 7 ;

(h) the communication of particulars of licences granted by one licencing authority to other licencing authorities ;

(i) the control of schools or establishments for the instruction of drivers of motor vehicles and the acceptance of driving certificates issued by such schools or establishments as qualifying the holder for exemption from Part I of the test specified in the Third Schedule ;

(j) the exemptions of drivers of road-rollers from all or any of the provisions of this Chapter or of the rules made thereunder ; and

(k) any other matter which is to be or may be prescribed.

Notes

Changes made by the Select Committee:—The change made in clause 2 (e) of this section removes the power, which the Select Committee considered unnecessary in view of the provisions contained in section 7 (5), to make rules for periodical examination of drivers of public service vehicles and replaces it by a power to make rules for the medical examination of drivers generally. The other changes made are aimed at making explicit provision for certain additional matters requiring to be prescribed.

Clause 2 (b).—This was inserted during the debates in the Legislative Assembly on the motion of Mr. T. S. Avinashilingam Chettier. *Vide.*, Legislative Assembly Debates, dated 5-9-38, Vol V.—No 7.

CHAPTER III

Registration of Motor Vehicles.

Necessity for registration

22. (1) No person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place for the purpose of carrying passengers or goods unless the vehicle is registered in accordance with this Chapter and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner.

(2) Nothing in this section shall apply to a motor vehicle while being driven within the limits of jurisdiction of one registering authority to or from the appropriate place of registration for the purpose of being registered under section 23, 25 or 39 or to a motor vehicle exempted from the provisions of this Chapter while in the possession of a dealer in motor vehicles.

Notes.

Notes on Clauses :—Cf. Indian Motor Vehicles Act, 1914, section 10.

Sub-clause (2) usually appears at present in provincial rules.

Changes made by the Select Committee :—The change made in clause (1) of this section by insertion of the words "or in any other place for the purpose of carrying passengers or goods" has the effect of bringing within the scope of this clause vehicles used for the carriage of passengers or goods in such areas as privately owned mill areas, tea gardens, and

mine areas to which it is desirable that the provisions regarding registration should extend. The change made in clause (2) is intended to make it impossible for a person residing upcountry to drive an unregistered car for long distances from a port

Register —In the case of *Baijnath Shaw* v. *The Corporation of Calcutta*, 36 C W.N 1147 = A I R. 1933 Cal 178 = 141 I C. 248, the suit was brought by the Corporation of Calcutta against Baijnath for the recovery of the sum of Rs. 69-1-6 for damage caused to the lamp-post belonging to the plaintiff Corporation by a motor car alleged to be property of the defendant The suit was decreed whereupon the Hon'ble High Court was moved and a rule was issued. The question arose with regard to the right way of proving an entry in the register or a duly authenticated copy of the material part of the register placed before the Court What the Court did was that a statement made in answer to a letter written to the Corporation without the person who made the statement being called, was admitted in evidence The plaintiff gave no evidence whatever of negligence on the part of the defendant or his servant. It was held, that the law is that where a vehicle is shown to be under the management of the defendant or his servant and an accident occurs such as in the ordinary course of things does not happen if he who has the management uses proper care, the onus exceptionally rests on the defendant to disprove that the accident arose from want of care. The authority for that proposition is the case of *Isaac Walton & Co* vs *Vanguard Motor Bus Co*, (1908) 25 T L R. 13 = 72 J P 505 see also the case of *Barnes Urban District Council* v *London General Omnibus Co*. (1910) 100 L T. 115 = 73 J P 68 = 7 L G.R. 359. In the first mentioned case a standard lamp erected on the footpath in front of the plaintiff's premises was damaged by a motor-omnibus of the defendants colliding with it The motor omnibus had in fact skidded into the lamp-post, and the Lord Chief Justice (Lord Averstone) in his judgment at p 14 said that there was evidence upon which the jury might come to the conclusion that there was negligence on the part of the driver of the vehicle. It may be taken therefore when there is a lamp-post on the pavement and a vehicle collides with it, that of itself is prima facie evidence of negligence on the part of the driver of the vehicle. It is in fact a case where the principle of *res ipsa loquitur* applies and when there is a prima facie negligence on the part of the

driver of the vehicle in that way the onus then shifts on the defendant to show either he was not the driver, or if the driver is the defendant's servant then there was in fact no negligence on the part of the driver. Before however a case is taken out of the ordinary rule that the plaintiff must prove negligence in order to succeed it must first of all be positively demonstrated that the vehicle causing the damage was at the time of accident, as a matter of fact, under the management of the defendant or his servant. In the present case the plaintiff made no attempt to show and indeed were not in a position to show who in fact was the driver of the vehicle and whether it was the defendant himself or a person for whose acts he would be responsible. There was in point of fact nothing whatever before the Court to indicate that even if the defendant was really the owner of the motor car No 10670 at the time of the occurrence on 3rd April 1930, such motor car was under the management of the defendant or his servant at the material time. Accordingly the suit was dismissed with costs.

It was further held that the right way of proving an entry in the Register of Motor Vehicles would be either that the register itself should be produced by a proper official or a duly authinticated copy of the material part of the register placed before the Court. It is obviously somewhat irregular for the Court to have accepted in proof of the ownership of the car a mere statement made in answer to a letter written by the plaintiff Corporation without the person who made the statement being called or a certified copy of the official register produced In any event it seems more than a little doubtful as to whether it can rightly be said that the mere fact that the register shows that a person of a particular name lives at a certain address as given in the register necessarily, for all purposes, decides that any person of the same name who happened to be found in that address, must be the owner of the particular car in question, especially having regard to the fact that it is quite possible that there might be another person of the same name living in the same house, particularly having regard to the frequent occurrence of similar names in this country and to the fact that in a large city like Calcutta often a number of families live in a cluster of dwellings which are described under one denomination.

Fatal Accidents :—According to the legal maxim—*Actio personalis moritur cum persona*—the wrongful acts of an indi-

vidual should be wiped out by the death of the injured person or the wrong doer. This was the common law of England. This common law was altered by the enactment of the Fatal Accidents Act, 1846, or, as it is better known, Lord Campbell's Act This Act was amended by an Act of 1864. This law has further been amended by the Law Reform Act, 1934 The Indian Act is Act XIII of 1855 enacted on the lines of Lord Campbell's Act The principle of the Act is to allow action by specified relatives if the deceased himself could have brought an action claiming damages assuming him to have been only injured and not killed. The most important point to notice is that the Statute only applies when death is actually caused by the wrongful act, and should death take place for an independent cause before action brought, then the family of the deceased will be unable to recover (See also sec 102 of this Act)

Under a document in writing a motor car was sold to defendant for Rs 1000 paid by him to one person and was transferred in his name in the police records The person to whom the defendant paid borrowed the amount, agreed to pay the defendant back, the said sum of Rs 1000 in monthly instalments of Rs. 100, the latter person himself having possession of the car and plying it for hire as belonging to himself; on repayment of the entire amount of Rs 1000, the defendant was to have the car transferred in the name of that other person, in the police records. There was an accident which resulted in the death of a person. It was held, on a construction of the document as a whole, that the defendant was not the owner of the car and was consequently not liable. *Goolbai Motabhai Shroff* v. *Pestonji Cowasji Bhandari*, A. I. R. 1935 Bom. 333 = 37 Bom L R 410 = 159 I C 363.

23.(1) Subject to the provisions of section 25 and section 39, every owner of a motor vehicle shall cause the vehicle to be registered by a registering authority in the province in which he has the residence or place of business where the vehicle is normally kept. Registration where to be made.

(2) A motor vehicle already registered under any enactment in force in British

India at the commencement of this Act shall be deemed to be registered under this Act until the 1st day of April, 1941, and on the application of the owner before that date shall be registered under this Act without payment of any registration fee.

(3) A Provincial Government may, by rules made under section 41, provide that within a prescribed period certificates of registration of any prescribed class of transport vehicles deemed to be registered under this Act by virtue of sub-section (2) shall be presented to a prescribed authority for the entry therein of all or any of the particulars specified in section 37.

Notes.

Notes on clauses :—The increasing inter-provincial circulation of vehicles makes it very desirable that registration shall have all-India validity. The object of these clauses (*viz.* 23, 28 and 29) therefore is that a certificate of registration as such when once taken out shall be valid in perpetuity throughout British India, and shall remain as a history of the vehicle during the vehicle's life But if the vehicle is transferred from one province to another for a period greater than twelve months, the owner will have to apply in the new province for the allotment of a fresh distinguishing mark (registered number) which will be entered in the certificate of registration The documents and records of registration will then be transferred to the new province. This will necessitate amendment of some provincial taxation Acts, but it is felt that the disadvantages of linking registration to taxation out-weigh the advantages.

Changes made by the Select Committee :—The Select Committee re-arranged this section by converting the proviso into a separate clause (*viz.*, clause 2). It has provided that a registration already in existence shall for a limited period be deemed to be a registration made under the new law, and has given to owners a right during that period to have it converted into a registration under the new law without payment of a registration fee. As the new law requires certain particulars to be

carried exhibited on a vehicle, and to be entered in certificates of registration, it has provided by the new clause (3) a means by which, if necessary, this object can be secured even before a new registration is accomplished

24. (1) An application by or on behalf of the owner of a motor vehicle for registration shall be in Form E as set forth in the First Schedule, shall contain the information required by that form, and shall be accompanied by the prescribed fee. Registration how to be made.

(2) The registering authority shall issue to the owner of a motor vehicle registered by it a certificate of registration in Form G as set forth in the First Schedule and shall enter in a record to be kept by it particulars of such certificate.

(3) The registering authority shall assign to the vehicle, for display thereon in the prescribed manner, a distinguishing mark (in this Act referred to as the registration mark) consisting of one of the groups of letters allotted to the province by the Sixth Schedule followed by a number containing not more than four figures.

Notes

Notes on clauses —The range of vehicles is extending farther and farther beyond provincial boundaries and the desirability of uniform distinguishing marks is becoming more evident

25. (1) Notwithstanding anything contained in section 23, the owner of a motor vehicle may apply to any registering authority to have the vehicle temporarily registered in the prescribed manner and for the issue in the prescribed manner of a temporary certificate of registration and a temporary registration mark. Temporary registration

(2) A registration made under this section shall be valid only for a period not exceeding one month, and shall not be renewable.

Notes.

Changes made by the Select Committee :—The amendment in clause (2) simplifies the wording without making any material change in its effect

Production of vehicle at time of registration.

26. The registering authority may before proceeding to register a motor vehicle require the person applying for registration of the vehicle to produce the vehicle either before itself or such authority as the Provincial Government may by order appoint in order that the registering authority may satisfy itself that the particulars contained in the application are true and the vehicle complies with the requirements of Chapter V and of the rules made thereunder.

Notes.

Notes on clauses —This provision already appears in provincial rules

Change made by the Select Committee :—The Select Committee substituted the words "such authority as the Provincial Government may by order appoint" in place of "before a prescribed authority." The object of the change is to enable the authority referred to be appointed more expeditiously than would be the case if the authority were to be prescribed by rules the making of which is subject to previous publication.

Refusal of registration.

27. The registering authority may refuse to register any motor vehicle if the vehicle is mechanically defective or fails to comply with the requirements of Chapter V or of the rules made thereunder, or if the applicant fails to furnish particulars of any previous registration of the vehicle, and it

shall furnish the applicant whose vehicle is refused registration with the reasons in writing for such refusal.

Notes.

Notes on clauses.—This provision already appears in provincial rules.

Changes made by the Select Committee – The Select Committee have provided later in section 35 for an appeal against a refusal to register under this section. Accordingly it is provided here that the reasons for any such refusal shall be recorded This has been done by insertion of the words "and it shall furnish the applicant whose vehicle is refused registration with the reasons in writing for such refusal" at the end of this section

28. (1) Subject to the provisions of section 29, a motor vehicle registered in accordance with this Chapter in any province or deemed to be registered under this Act shall not require to be registered elsewhere in British India and a certificate of registration issued or in force under this Act in respect of such vehicle shall be effective throughout British India : Effectiveness in British India of registration

Provided that the Provincial Government may, by rules made under section 41, provide that the certificates of registration of transport vehicles of any prescribed class issued by an authority not within the province and effective by virtue of sub-section (2) of section 23 shall not be valid unless they contain the particulars specified in section 37 or such of those particulars as may be prescribed.

(2) Subject, in the case of international motor vehicle certificates issued in pursuance of the International Convention relative to motor traffic concluded at Paris on the 24th

day of April, 1926, to any rules made by the Central Government under section 92, and subject in any other case to the provisions of sub-section (1) of section 23 and sub-section (3) and sub-section (4) of this section, a motor vehicle registered by a competent authority in any Indian State or in French or Portuguese Settlements bounded by India shall not require to be registered in British India :

Provided that there is in force in respect of the vehicle a certificate conforming to and containing substantially the same particulars as the certificate of registration in Form G as set forth in the First Schedule issued by such competent authority in respect of such vehicle.

(3) A certificate complying with the requirements of the proviso to sub-section (2) shall be effective throughout British India as if it were a certificate of registration issued under this Act.

(4) Sub-section (2) shall not apply to any motor vehicle previously registered in British India, if the certificate of registration of the vehicle in British India is for the time being suspended or cancelled for any reason other than that of permanent removal of the vehicle from British India.

(5) If at any time the Central Government is satisfied that motor vehicles registered in British India under this Act are not permitted to be driven in any Indian State or French or Portuguese Settlement without fresh registration in such State or Settlement, or are permitted to be driven only subject to unreasonable conditions or that like conditions and requirements to those

imposed under this Act (including the specification of the particulars registered by Form G as set forth in the First Schedule) are not imposed in a reasonable degree upon the issue and for continued effectiveness of certificates of registration in any State or Settlement as aforesaid, the Central Government shall, by notification in the official Gazette, declare that certificates of registration generally or in respect of any particular class of motor vehicle issued in any such State or Settlement shall not be effective in British India.

Notes

Notes on clauses —See notes under section 23

Changes made by the Select Committee —In sub-section (1) minor changes have been made in the drafting and the Select Committee omitted the reference to liability to provincial taxation as unnecessary and possibly misleading The Select Committee added a proviso affording the Provincial Government a means of securing when it thinks necessary a record of the particulars regarding transport vehicles which are required under section 37 Sub-sections (2) and (3) have been recast in order to provide that the recognition of a registration effected in a State or Foreign Settlement shall, as has already been provided in section 9 in the case of licences be conditional on reciprocal treatment in such States or Settlements of a registration effected in British India, and on the existence of adequate measures for the control of registration

Assignment of fresh registration mark on removal to another province

29. (1) When a motor vehicle registered in one province has been kept in another province for a period exceeding twelve months, the owner of the vehicle shall apply to the registering authority, within whose jurisdiction the vehicle then is, for the assignment of a new registration mark and shall present the certificate of registration to that registering authority.

any such entry shall communicate the transfer of ownership to the original registering authority.

Notes

Notes on Clauses :—See notes under section 30.

Changes made by the Select Committee :—The Select Committee extended the time limit for compliance with the provisions of this section from fourteen days to thirty days.

Alteration in motor vehicles.

32. (1) If a motor vehicle is so altered that the particulars contained in the certificate of registration are no longer accurate, the owner of the vehicle shall, within fourteen days of the making of any such alteration, report the alteration to the registering authority within whose jurisdiction he resides and shall forward the certificate of registration to that authority together with the prescribed fee in order that particulars of the alteration may be entered therein :

Provided that it shall not be necessary to report any change in the unladen weight of the motor vehicle consequent on the addition or removal of fittings or accessories, if such change does not exceed two per cent. of the weight entered in the certificate of registration.

(2) A registering authority other than the original registering authority making any such entry shall communicate the details of the entry to the original registering authority.

Notes.

Notes on Clauses :—See notes under section 30.

Changes made by the Select Committee :—The Select Committee added the Proviso to sub-section (1) to make a provision

to be found in certain Provincial rules. The changes in sub-section (2) are formal only.

33 (1) A registering authority or other prescribed authority, which has reason to believe that any motor vehicle within its jurisdiction is in such a condition that its use in a public place would constitute a danger to the public, or that it fails to comply with the requirements of Chapter V or of the rules made thereunder, may, after giving the owner an opportunity of making any representation he may wish to make, for reasons to be recorded in writing suspend the certificate of registration of the vehicle until the defects are remedied to its satisfaction. Suspension of registration.

(2) An authority other than a registering authority shall, when making a suspension order under sub-section (1), intimate in writing the fact of suspension and the reasons therefor to the registering authority within whose jurisdiction the vehicle is at the time of the suspension.

(3) Where the registration of a motor vehicle has been suspended under sub-section (1) for a continuous period of not less than one month, the registering authority, within whose jurisdiction the vehicle was when the registration was suspended, shall, if it is not the original registering authority, inform that authority of the suspension; and when the suspension has continued without interruption for a period of not less than six months, the registering authority, within whose jurisdiction the vehicle was when the registration was suspended, may, if it is the original registering authority, cancel the registration, and, if it is not the original

(6) A registering authority making an order of cancellation under this section shall, if it is the original registering authority, cancel the certificate of registration and the entry relating to the vehicle in its records, and, if it is not the original registering authoity, forward the certificate of registration to that authority, and that authority shall cancel the certificate of registration and the entry relating to the motor vehicle in its records.

(7) The expression "original registering authority" in this section and in sections 30, 31, 32 and 33 means the registering authority in whose records the registration of the vehicle is recorded.

Notes.

Changes made by the Select Committee:—The provision relating to cancellation of registration on permanent removal of the vehicle from British India has been removed from sub-section (1) and reproduced as sub-section (4).

In sub-section (3) the Select Committee has provided for the appointment of the examining authority by order of the Provincial Government instead of by rule made after previous publication, and has provided that an owner shall have an opportunity of being heard.

In sub-section (5) the change made ensures that all orders of suspension or cancellation shall be communicated in writing to owners of vehicles.

Sub-section (6) follows the principle followed in the revision of section 33 (3).

Appeal:—The owner of a motor vehicle aggrieved by an order of cancellation of registration under this section has got the right of appeal under section 35.

Appeals. 35. (1) Any owner of a motor vehicle aggrieved by an order of refusal under section 27 to register a motor vehicle or under

sub-section (1) of section 38 to issue a certificate of fitness or by an order of suspension or cancellation made under section 33 or 34 by an order of cancellation under sub-section (3) of section 38 may, within thirty days of the date on which he has received notice of such order, appeal against the order to the prescribed authority.

(2) The appellate authority shall give notice of the appeal to the original authority and after giving opportunity to the original authority and the appellant to be heard either personally or by pleader in the appeal pass such orders as it thinks fit :

Provided that orders of the original authority shall remain in force pending the disposal of the appeal unless the appellate authority otherwise directs.

Notes.

Changes made by the Select Committee :—The Select Committee has made sub-clause (6) of clause 34 of the Bill into a separate section (*i.e.*, this section), and has elaborated it so as to provide for an appeal against any order of suspension or cancellation, and also against an order refusing under section 27 to register a vehicle.

Clause (2) :—This clause, which was added in course of Legislative Assembly debates, allows representation, either personally or by pleader, at the hearing of the appeal.

36. (1) After the commencement of this Act, a registering authority shall refuse to register any transport vehicle other than a motor cab, unless the application for registration is accompanied by a document in Form F as set forth in the First Schedule signed by the maker of the vehicle or an assembler duly authorised by the maker in this behalf stating the greatest laden weight

Special requirement for registration of transport vehicle.

and greatest axle weights for which the vehicle is and the several axles are designed:

Provided that nothing in this sub-section shall apply to any application for the registration of a transport vehicle already registered under any enactment in force at the commencement of this Act.

(2) Where a transport vehicle or chassis, as the case may be, has affixed to it a metal plate, bearing the stamp of the maker or assembler and identified as appertaining to the particular vehicle or chassis to which it is attached, which contains the particulars specified in sub-section (1), that plate may at the discretion of a registering authority be deemed to be the document referred in sub-section (1).

Notes

Notes on Clauses —In order to check overloading the maximum permissible weight and axle weights must be specified in the registration certificate The registering authority has no means of determining these and it is proposed therefore to require the manufacturer to certify in respect of every chassis. To guard against the possibility of the certified weight being incorrectly specified, it is proposed that the legal weight on any axle shall be governed by the size of the pneumatic tyres attached to the wheels of that axle in accordance with scheduled permissible loads on tyres of different sizes.

Changes made by the Select Committee.—In addition to the minor formal amendments, the Select Committee has by an added proviso to sub-section (1) excluded from the operation of this section transport vehicles already registered, owing to the practical difficulty that might be experienced in complying with the requirements contained in this section

The Select Committee omitted sub-clauses (2) and (3) of the Bill dealing with the import of cars, and accordingly omitted the reference to Customs Collector in sub-clause (4) of the Bill which has now been numbered as sub-section (2) of this section.

Special particulars to be recorded on registration of transport vehicle.

37. (1) A registering authority, when registering a transport vehicle other than a motor cab, shall enter in the record of registration and shall also enter in the certificate of registration of the vehicle the following particulars, namely :—

(a) the unladen weight of the vehicle ;

(b) the number, nature and size of the tyres attached to each wheel ;

(c) the registered laden weight of the vehicle and the registered axle weights pertaining to the several axles thereof, fixed in accordance with sub-section (2) with reference to the particulars of the tyres entered in the certificate of registration ; and

(d) if the vehicle is used or adapted to be used for the carriage of passengers solely or in addition to goods, the number of passengers for whom accommodation is provided,

and the owner of the vehicle shall have the said particulars exhibited in the prescribed manner on the vehicle.

(2) Notwithstanding any statement contained in the document referred to in sub-section (1) of section 36 as supplied by the maker or assembler of a transport vehicle, the registered weight to be recorded by the registering authority for any axle shall not exceed the permissible weight for that axle calculated in accordance with the Seventh Schedule, nor shall the registered laden weight of the vehicle exceed the sum of the several axle weights as so determined :

Provided that where it appears to a Provincial Government that heavier weights than those specified in the Seventh Schedule may be permitted in a particular locality for vehicles of a particular type, the Provincial Government may by notification in the Official Gazette direct that the provisions of this sub-section shall apply with such modifications as may be specified in the notification.

(3) When by reason of an alteration in the number, nature or size of tyres attached to the vehicle the registered laden weight or any registered axle weight recorded in the certificate of registration no longer accords with the laden weight or the axle weight as determined in accordance with sub-section (2), the provisions of section 32 shall apply, and the registering authority shall enter in the certificate of registration a revised registered laden weight and registered axle weights.

Notes.

Notes on Clauses :—See notes under section 36.

Clause (3) is intended to meet the case of an owner who registers his vehicle for a specified laden weight on one set of tyres, and then puts on smaller tyres which have a lower carrying capacity. If the gross load on the smaller tyres exceeded the maximum calculated in accordance with the provisions of the Tenth Schedule an offence of overloading would arise.

Changes made by the Select Committee :—In sub-clause (1) of the Bill, the addition to clause (c) (i) introduces a necessary reference to passenger-carrying vehicles. The change in clause (c) (ii is formal. The Select Committee omitted clause (c) (iii) referring to the speed of the vehicle.

Clause (1) :—Sub-clause (c) was recast and sub-clause (d) was added in the course of the debates in the Council of States.

Clause (2) :—The proviso to this clause was added, in the course of the Legislative Assembly debates, on the motion of Mr. K. G. Mitchell who observed "The object of this is that whereas the Seventh Schedule applies generally to motor transport on all kinds of roads, there are cases where special types of passenger transport vehicles, in towns where the speed is controlled and the design is peculiar to them have a load on the front axle which somewhat exceeds the load provided in the Seventh Schedule. There is no reason why that should not be allowed, because the vehicles are confined to towns where the roads are good and the speeds are controlled." Vide Legislative Assembly Debates, dated 5 9. 38, Vol. V—No 7.

38. (1) Subject to the provisions of section 39, a transport vehicle shall not be deemed to be validly registered for the purposes of section 22, unless it carries a certificate of fitness in Form H as set forth in the First Schedule, issued by the prescribed authority, to the effect that the vehicle complies for the time being with all the requirements of Chapter V and the rules made thereunder. Where the prescribed authority refuses to issue such certificate, it shall supply the owner of the vehicle with its reasons in writing for such refusal.

Certificate of fitness of transport vehicle.

(2) Subject to the provisions of sub-section (3), a certificate of fitness shall remain effective for three years, unless a shorter period, not being in any case less than six months, is specified in the certificate by the prescribed authority.

(3) The issuing authority or the prescribed authority may for reasons to be recorded in writing cancel a certificate of fitness at any time, if satisfied that the vehicle to which it relates no longer complies with all the requirements of this Act and the rules made thereunder ; and on such cancel-

lation the certificate of registration of the vehicle and any permit granted in respect of the vehicle under Chapter VI shall be deemed to be suspended until a new certificate of fitness has been obtained.

(4) Notwithstanding anything contained in sub-section (1), a Provincial Government may, until the expiry of one year from the commencement of this Act, by rules made under section 41, dispense with the necessity for a certificate of fitness in the case of all or any transport vehicle in respect of which certificates of registration and permits had already been issued before the commencement of this Act.

Notes.

Notes on Clauses —As registration is not to be renewed annually, it is necessary to provide that tranport vehicles shall be brought up periodically, or as required, for mechanical inspection. It is proposed to do this by attaching to the registration certificate a certificate of fitness which will specify the date by which the vehicle has to be re-examined. One real advantage to be derived from these certificates is that the inspection will take place as and when due, and there will be no necessity for any disorganisation of passenger services due to all vehicles being called up for examination at a particular time.

Changes made by the Select Committee—*Sub-section (1).*—The Select Committee introduced a reference by way of a saving clause to section 39. It added provision for communication in writing of the reasons for a refusal to grant a certificate of fitness.

Sub-section (2).—It has been revised so as to secure that while a certificate issued in respect of a new vehicle shall remain effective for three years, any other certificate shall require annual renewal. But in the course of the debates in the Legislative Assembly the words "issued for the first time with respect to a new vehicle" were omitted and the words "unless a shorter period, not being in any case less than six

months, is specified in the certificate by the prescribed authority," were substituted in place of words "and in any other case for one year only." This means that it will stand for three years unless a shorter period is specified and no period shall be shorter than six months

Appeal —The order of refusal to issue a certificate of fitness under sub-section (1) and the order of cancellation under sub-section (3) are subject to appeal in accordance with the provisions of section 35

Registration of vehicles, the property of the Central Government.

39. (1) The authority specified in Part B of the Fourth Schedule may register any motor vehicle which is the property of the Central Government; and any vehicle so registered shall not, so long as it remains the property of the Central Government, require to be registered otherwise under this Act.

(2) A transport vehicle registered under this section shall carry a certificate of fitness in Form H as set forth in the First Schedule issued by the authority referred to in sub-section (1).

(3) An authority registering a vehicle under sub-section (1) shall assign a registration mark in accordance with the provisions contained in the Fourth Schedule and shall issue a certificate in respect of the vehicle that the vehicle has been registered under this section.

(4) If a vehicle registered under this section ceases to be the property of the Central Government, the provisions of section 23 shall thereupon apply.

(5) The authority registering a vehicle under sub-section (1) shall furnish to any Provincial Government all such information regarding the general nature, overall dimen-

sions, and axle weights of the vehicle as the Provincial Government may at any time require.

Notes.

Notes on Clauses:—This provides for the continuance of the existing arrangements under which Defence Department vehicles are exempt from the ordinary procedure of registration.

Changes made by the Select Committee:—The Select Committee has added sub-section (2) being of opinion that transport vehicles registered under the special provision of this section should not be exempt from the requirement to carry certificate of fitness It has provided accordingly in the Fourth Schedule.

Application of Chapter III to trailers

40. (1) The registration mark assigned to a trailer shall be displayed in the prescribed manner on the side of the vehicle.

(2) No person shall drive a motor vehicle to which a trailer is or trailers are attached unless the registration mark of the motor vehicle so driven is displayed in the prescribed manner on the trailer or on the last trailer in the train, as the case may be.

Notes.

Changes made by the Legislative Assembly:—This section was added in the course of the Legislative Assembly debates with a view to remove doubt as regards the position of trailers in respect of registration and to make a statutory provision that the number of the motor vehicle should be carried on the rear of the trailer. A trailer is a motor vehicle and, as such, has to be registered and has to have a registration mark and number assigned to it. The trailer's number will be permanent and shall be displayed in the prescribed manner on its side, but the mark of the motor vehicle, to which it happens to be attached to the time being, will have to be removed from the motor vehicle and attached to the rear of the trailer.

41. (1) A Provincial Government may *make rules for the purpose of carrying into* effect the provisions of this Chapter. Power to make rules.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the conduct and hearing of appeals that may be preferred under this Chapter;

(b) the appointment, functions and jurisdiction of registering and other prescribed *authorities*;

(c) the issue of certificates of registration and duplicate certificates of registration to replace certificates lost, destroyed or mutilated;

(d) the temporary registration of motor vehicles, and the issue of temporary certificates of registration and marks;

(e) the manner in which registration marks and the particulars referred to in sub-section (1) of section 37, and other prescribed particulars shall be exhibited;

(f) the fees to be charged for the issue or alteration of certificates of registration, for certificates of fitness, for registration marks, and for the examination or inspection of motor vehicles, and the refund of such fees;

(g) the forms, other than those set forth in the First Schedule, to be

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(c) the issue of certificates of registration and duplicate certificates of registration to replace certificates lost, destroyed or mutilated ;

(d) the temporary registration of motor vehicles, and the issue of temporary certificates of registration and marks ;

(e) the manner in which registration marks and the particulars referred to in sub-section (1) of section 37, and other prescribed particulars shall be exhibited ;

(f) the fees to be charged for the issue or alteration of certificates of registration, for certificates of fitness, for registration marks, and for the examination or inspection of motor vehicles, and the refund of such fees ;

(g) the forms, other than those set forth in the First Schedule, to be

used for the purposes of this Chapter ;

(h) the communication between registering authorities of particulars of certificates of registration and by owners of vehicles registered outside the province of particulars of such vehicles and of their registration ;

(i) the particulars to be furnished by the owner of any motor vehicle to the registering authority, upon the transfer of possession of the motor vehicle under the terms of a hiring agreement ;

(j) the extension of the validity of certificates of fitness pending consideration of applications for their renewal ;

(k) the exemption from the provisions of this Chapter, and the conditions and fees for exemption, of motor vehicles in the possession of dealers ;

(l) the exemption of road-rollers from all or any of the provisions of this Chapter and the rules made thereunder, and the conditions governing such exemption ; and the exemption of delivery vans from the provisions of section 38 and the conditions governing such exemption ; and

(m) any other matter which is to be or may be prescribed.

Notes.

Clause (2) (a) —This was added in the course of debates in the Legislative Assembly in view of provision of appeals made in section 35

Clause (2) (e) and (f) —The Select Committee made one correction in a reference in clause (d) of the Bill and inserted two minor additions in clauses (d) and (e) which are now numbered (e) and (f) in this section.

Clause (2) (i) —This has been added in the course of the Legislative Assembly debates with a view to vest the Provincial Governments with powers to require that the owner shall notify the registering authority that the vehicle has been temporarily transferred to the possession of the hirer. The object is to enable the vehicle to be traced in a hurry after an accident

Clause (2) (l) —The Select Committee added this clause giving power to exempt road-rollers from the provisions of this Chapter and to exempt delivery vans from the requirements of section 38 regarding the carrying of certificates of fitness

Clause (2) (m) :—This was added by the Select Committee. What is covered by this clause is matters which are to be prescribed, that is to say, which must be prescribed by the terms of the Act and matters which may be prescribed, that is, those for which, without defying the principles of the statute, one can find cover for himself when making rules.

Registration

There is nothing in the wordings of the Rule XI of the U. P. Motor vehicles Rules applicable to cars registered outside the United Provinces.

It is clear from the definition of "Registering Authority" in Rule 3 that this expression, as used in R. II means the authority who had registered the car under the rules in force in the United Provinces. Where therefore the applicant's car is not registered in the United Provinces but brought there for a short period R. 11 has no application to his case. *Chaudhri* v. *Emperor*, 1930 A.L.J. 527 = 120 I. C. 272 = 31 Cr. L. J. 10 = 1930 Cr. C. 50 = A I R. 1930, All. 34.

Conditions subject to which a motor vehicle may be registered :—According to the Madras Motor Vehicles Rules horns should be blown when a motor car goes from the right side to the wrong side of the road for the purpose of taking turn. In a case there was an omission to blow the horn and a collision was caused with another vehicle constituting an offence under the Mad. Motor Vehicles Rules : *Rathnam* v. *Emperor*, 15 Ind. Cas. 487.

The rule of the road should be strictly respected. The rules of the road are not rules of law at all, but rules of common sense, and whether a departure from them is culpable or not depends on the circumstances in which the departure is made *Christie* v. *Glasgow Corporation*, (1927) S. C. 273 : 276.

The rule of the road is as follows :—

By virtue of the rule of the road it is the duty of vehicle drivers, and drivers and riders of horses, in the normal case, to keep to a certain side of the road. Which side that shall be varied with the circumstances But the principal rules are :

(a) two vehicles meeting one another must keep each to its left, or near side of the road.

(b) one vehicle overtaking another must pass that other on its right or off side.

When there is no other vehicle on the road the driver is not bound to keep on the left side of the road. But if a vehicle elect to go on the wrong side, then a higher standard of care will be required of the driver. In the event of a collision between two vehicles one of which is on the wrong side, it will be presumed that the latter has been negligent.

But every collision should not the attributed to the infringement of the rule of the road ; *Wayde* v. *Carr*, 25 R. R. 551.

Though the rule of the road is not to be adhered to if by departing from it an injury can be avoided, yet in cases where parties meet on the sudden and an injury results, the party on the wrong side should be held answerable, unless it appear clearly that the party on the right had ample means and opportunity to prevent it. *Chaplin* v. *Howes*, 33 R. R. 705.

Crown Debt :—The respondent had obtained a money decree on a debt and, in execution, had attached and brought to sale a motor car belonging to his judgment debtor. The Crown, represented by the Deputy Commissioner of Police in charge of Licenses, sent a written notice to the Court claiming a certain sum out of the money paid into Court as arrears of tax due by the judgment-debtor under the Madras Motor Vehicles Taxation Act This tax is made payable by the Act in respect of licenses which owners of motor cars are required to take out under the Act. The arrears of unpaid tax due by the judgment debtor were clearly a debt to the Crown, that is to say a Crown debt. The debt being created by Act was a speciality debt, and debts due to the Crown by record or speciality have priority over all debts. Even regarding the debt as a simple debt the Crown would have the prior right to payment over the respondent, because whenever the right of the Crown and the right of the subject in respect of payment of a debt of equal degree compete, the Crown's right prevails. The effect of an attachment in India under the Civil Procedure Code is not to create a charge or to convert the attaching creditor into a secured creditor. The money, the sale proceeds, being in Court, and unpaid to the decree-holder, the Court on receiving notice of the Crown debt was bound to recognise the Crown's prerogative right to priority of payment of its debt out of that money. The Crown should not be left to take only those remedies as are provided for in Ss. 8 and 9 of the Motor Vehicles Taxation Act. These particular provisions do not exclude the Crown's power to enforce its prerogative right by other means. *Deputy Commissioner of Police, Madras* v. *S Vedantam* A. I R. 1936 Mad. 132 = 1935 M. W. N. 1263 = 69 M. L. J. 832 = 42 M. L. W. 918 = 159 I. C. 634 = 59 Mad. 428.

Fees.

One Sudhamoy was convicted under s. 16 of the Indian Motor Vehicles Act having contravened an order of the Chairman of the Krishnagar Municipality prohibiting the plying of motor taxies and lorries for the purpose of a gain within the jurisdiction of that municipality on all its roads without the special permission of the Chairman. Where no rules have been framed under the Act to enable a municipality to impose a tax on motor vehicles plying for hire the municipality cannot take advantage of Rule 19 to impose the tax.

Rule 19 was passed for the protection of the roads and a prohibition under the rule does not distinguish between private vehicles and vehicles plying for hire : *Sudhamoy v. Chairman, Krishnagar Municipality,* (1925) 41 C. L J. 566 = A.I.R. 1925 Cal. 1026 = 88 Ind Cas. 1045 = 26 Cr. L J. 1269.

Rule 7 framed by the Bombay Government under section 11 of Motor Vehicles Act (VIII of 1914), which provides that certain annual fees have to be paid for renewal of certificate of registration is not *ultra vires* as the words "incidental to registration" in sec 11 are wide enough to recover renewal of certificates. *A H. C Sykes v. Patrick Kelly,* A I R. 1933 Bom 460 = 35 Bom. L R 1027 = 146 I. C. 6 F. B. Clause (f) of section 41 of this Act has made a clear provision, empowering a Provincial Government to make rules regarding fees to be charged for the issue or alteration of certificate of registration.

Issue of certificates of Registration.

When a permit has been issued under Rule XXIV of the U. P. Motor Vehicles Rules, it was attempted to make sections VIII & IX of the Act to apply to such permits. It was held : that they do not apply. It was further held that sections 8 & 9 will apply to the driver's license prescribed by section VI of the Act read with Rules XX to XXII of the U. P. Motor Vehicles Rules. A District Authority is not authorized under Rule XXIV to prescribe fixed routes for public vehicles and prohibit them from plying along any other road. *Hasan Ahmed v. Emperor,* 20 Cr. L. J 199 (*Emperor v. Rananjai Singh,* A. I R. 1928 All. 261. referred to).

If time limit is introduced in a certificate of registration, it was held under the Bom Motor Vehicles Rules that such time limit is without jurisdiction and no power has been given to the Local Government under this section to make rules to that effect : *Emperor v Baker,* (1922) 24 Bom. L. R. 50 = 46 Bom. 616 = 65 Ind. Cas. 633 = 23 Cr. L. J. 169.

Similarly it was held by the Bombay High Court that the Local Government has no power to fix a time limit on a certificate of registration and to introduce such rule in their Motor Vehicles Rules. If such rules are made they are *ultra vires* : *Emperor v. Sherton,* 46 Bom. 616 = 24 Bombay L. R. 50 = A. I. R. 1922 Bombay 42.

Notification of change of ownership.

An owner is liable if he permits a faulty system of working to be adopted, or if he employs incompetent servants. *Jones v. C P. Roy*, 110 L T 83.

It is therefore necessary that the change of ownership must be notified to the licensing authority, without which the real offending owner cannot be traced.

Identification of Motor Vehicles.

'Their Lordships Sir Shah Mohammed Sulaiman, Chief Justice and Justice Sir Lal Gopal Mukerji dismissed to-day an application in revision filed by Shiva Prosad of Benares against his conviction and sentence to a fine under the Motor Vehicles Act for not having proper number plates on his motor cars.

The case against Shiva Prosad was that when he had his cars registered the police assigned him numbers which he printed on his number plate in Hindi script instead of in English Their Lordships said that the rules provided that the registering authority shall assign distinguishing marks and it was not disputed that the number was in English. The motor rules defined a number as including letters, figures and marks not in the arithmetical sense only The question for consideration was whether the accused reproduced the exact numbers assigned to him by the registering authority. The accused did not deny that it was his duty to reproduce the numbers assigned to him. His contention was that if he reproduced those numbers in Hindi, he had sufficiently complied with the rules

In Their Lordships' opinion, the contention was not correct, because it was the accused's duty to reproduce that particular number which was assigned to him It was not compliance with the rules if the sounds of the numbers were reproduced. There was no doubt that the U. P. Motor Rules did not expressly provide that the number must be in English but it was clear that the accused had to reproduce the numbers which had been assigned to him by the registering authority. If Their Lordhips accepted the contention of the accused, foreign languages could be used by a motorist which certainly was not the intention of the legislature. It was, therefore, clear that the number plate as displayed in Hindi was not the number assigned to him"—The Statesman, Sunday, the 20th August, 1933 Column 7, Top = *Shiva Prasad Gupta v. Emperor*,

34 Cr. L J. 1029 = 145 I. C. 670 = A I.R. 1933 All. 820 = 1932 Cr. C 1418 = 1933 A L J. 1233.

A chauffeur was driving a car of certain person without the back light. The result was that the registered number was not legible on account of want of light. The owner was prosecuted but he cannot be held liable because he was not then in the car. In such a case it is usual to give the driver a warning In this connection it was held by the Rangoon High Court that Magistrates should not encourage prosecution for every trivial offence : *Mahomed Surity* v. *Emperor*, 76 Ind. Cas 564 = 25 Cr. L J. 196 (vide 36 Cal. 415 : 1 Rang. 600 ; 45 Cal. 430).

Plying for hire.

The expression "to ply for hire" as used in the motor vehicles plying for hire rules ordinarily means to exhibit a vehicle in such a way as to invite those who may desire to do so to hire it or to travel in it on payment of the usual fares and also to offer its use on payment to any member of the public, thereby soliciting custom : *Emperor* v *Gonesh Rama Chandra*, 32 Bom. L R. 337 = 1930 Cr. C. 485 = A I.R. 1930 Bom. 161 = 125 I. C 716 = 31 Cr. L. J. 931, following *Local Fund Overseer, Mayavaram* v. *Pakkhirisami Thevan*, 106 I C. 446 = A.L R. 1928 Mad. 166 = 29 Cr. L.J. 30 = 27 M.L.W. 66 = 51 Mad. 527 = 53 M L.J. 213 and *Sardul Singh* v. *Emperor*, 30 Cr. L. J. 700 = 116 I C. 885 = A.I.R. 1929 Lah. 422 Ind. Rul. 1929 Lah. 597 = 10 Lah. 505 = 31 P. L. R. 95.

Where the driver of a motor lorry does not use the lorry in conformity with the conditions specified in the road certificate the owner of the lorry is guilty of an offence under section 16 Motor Vehicles Act read with R 3 Punjab Motor Vehicles Plying for Hire Rules, 1922, even though he is not present when the breach of the condition takes place. Where therefore a driver was found carrying 17 (when only 10 could be carried under the road certificate) and one passenger was sitting on mudguard which was prohibited, it was held that there being clear breach of the road certificate the owner was liable under R. 3 Punjab Motor Vehicles Plying for Hire Rules, 1922 although he was not present (38 Cal. 415, 45 Cal. 430 and A.I.R. 1924 Cal. 985 relied on, 27 P.R. 1918, A.I.R. 1928 Cal. 410 and A.I.R. 1924 Rang. 63 distinguished) : *Deri Dayal* v. *Emperor*, 1930 Cr. C. 909 = A.I.R. 1930 Lah. 865.

The word "ply" in a motor permit must be read to mean ply for hire. Where the driver used the motor vehicle for transporting himself and his relations across a road which was not mentioned in the license, it was held that he was not plying for hire and there was no contravention of the permit so as to render him liable to be convicted under s. 16 of the Motor Vehicles Act. *Emperor* v. *Mohamed Hanif* 7 O. W. N. 464 = 1930 Cr C. 571 = A.I R. 1930 Oudh 251. The word "ply" has exactly the same meaning as to ply for hire, that is to say, it means that the person driving a vehicle stops to take up or put down passengers for reward A person merely driving his vehicle cannot be said to be plying the vehicle. *Berry Mahapatra* v. *Emperor*, A. I. R. 1936 Pat. 321 = 17 P. L. I. 378 = 63 I. C. 399 = 37 Cr. L J. 850 = 1936 Cr. C. 497. But conditions of the permit apply to the licensed vehicles for the period of the license irrespective of whether it was in use at the time as a carriage standing or plying for hire or the use was gratuitous. When, therefore, the prescribed Form G of the permit forbade the use of the permitted vehicle for the carriage of more than four passengers at a time but the owner allowed five of his friends gratuitously to ride in that vehicle on the public highway, he was found to have contravened Rule 28 of the Calcutta Motor Vehicle Rules and was convicted under sec. 16 of Act VIII of 1914. *Emperor* v. *Ram Tahal Singh*, A. I. R. 1929 Pat. 522 = 9 Pat. 169 = 1929 Cr. C. 282.

Plying for hire means the act of soliciting custom. Where a person who owned a motor lorry purchased goods at one place and after transporting them to another place sold the goods there to their customers but it did not appear that he solicited custom at any time, it was held that the owner of the lorry was not liable to be convicted for breach of the Punjab Motor Vehicles Plying for Hire Rules. *Khusi Ram Shadi Ram* v. *Emperor*, I. R. 1931 Lah. 670 = 132 I. C. 702 = 32 Cr. L. J. 948 = 1931 Cr. C. 857.

If a permit is granted for plying for hire under the Pat. Motor Vehicles Rules the Magistrate has no power to cancel it: *Sheodatt* v. *Emperor*, 29 Cr. L. J. 771 = 110 I. C. 803 = A. I. R. 1929 Pat. 64 = 10 P. L. T. 429.

Taking Petrol charges from a person who cused's motor lorry does not amount to hiring. payment to the accused of the cost of petrol

lorry is at the disposal of the person so paying such charges is not payment for the use of the lorry. It is equivalent to mere replacement in the petrol tank of the petrol used. The accused therefore cannot be convicted of an offence of plying his lorry for hire : *Kadir Mohideen Sahib, In re*, 68 Mad. L. J. 481 = 36 Cr. L. J. 924 = 156 I C. 325 = 41 M. L. W. 498 = 1935 M. W. N. 325 = A. I. R. 1935 Mad. 971 = 1935 Cr. C. 923.

It may be true that R. 50(a) was primarily intended to apply to motor vehicles which are used for the express purpose of letting for hire, but even if a motor vehicle is used only once for such a purpose, then on that occasion it is nonetheless let for hire because the owner does not ordinarily use his lorry for the purposes of reward. If a person undertakes to convey goods for reward in his private vehicle, he has let the vehicle for hire and so commits an offence under R. 30(1), Madras Motor Vehicles Rules. *Public Prosecutor* v. *R. Raja Gopalan*, 39 Cr. L. J. 447 = 174 I. C. 127 = A. I. R. 1938 Mad. 233 = 46 M. L. W. 959 = 1931 M. W. N. 30.

If a person carries passengers in his bus from outside British territory and passengers pay their fare to him to carry them there and back, he does ply his bus for hire within British territory. The fact that the end of the journey at one side terminates outside British territory does not exclude the bus from the operation of R. 31 and R. 33 so far as the journey within British territory is concerned. For the journey through British territory the bus takes passengers who have paid to be taken. The bus is in fact plied for hire. It is run to take passengers and the passengers pay and it ran through British territory. *Elias* v. *Emperor*, A. I. R. 1939. Sind 85 = 40 Cr. L. J. 558 = 181 I. C. 449.

The plying for hire implies that there is waiting and soliciting for custom in a public place. When this is not proved, no offence can be said to have been committed. The principle laid down as regards plying for hire must apply to letting for the purposes of R. 3, Motor Vehicles Rules (Bom.) 1915. The rule applies to letting in public places and this implies that the actual transaction of letting must be done in a public place where it is open for any member of the public to take the car on hire. It cannot, therefore, apply to a case where the letting was to a selected customer, *viz.*, the Principal of the school, and was not done in a public place. The words "in public places" in the rule govern the word "let" and the

rule does not cover the case of any letting whether the letting be in a public place and to any member of the public or whether it is done in a private place and to a selected customer only. The letting referred to in the rule is complimentary to the plying for hire and the rule is intended to cover cases in which the letting may be done by one person, the owner of the car, and the plying for hire may be done by another person, a servant *Emperor* v. *Nandkishore Singh Gayaprasad*, 38 Cr L. J. 1019 = 171 I. C. 277 = A. I. R. 1937 Bom 309 = 39 Bom L. R. 616 = I. L. R (1937) Bom. 719.

Liability of the owner.

Vide : Notes on section 112.

Miscellaneous.

According to the Burma Motor Vehicle Rules, a tram car must always be passed on the left side with a special exception when a difficulty arises. A person is therefore rightly convicted for passing the tram car on the right : *Ahmed* v. *Emperor*, 21 Cr L. J. 484. Although R. 19 (1) of the Bombay Rules refers to a tram car whether it be going in the same or in the contrary direction the rule covers a tram car which is stationary. The adverb 'ordinarily' denotes that the rule applies except in a case in which there is some impediment to passing the tram car on the near side, for example, the road may be up or there may be a long time of slow moving traffic which would make it impossible to pass the tram car on the near side within a reasonable time. The mere fact that there were in fact passengers which made it difficult for accused to pass a tram car on the near side and there was plenty of room to pass it on the right side, there was not enough to take the case out of the rule. *Emperor* v. *Ribbans*, 35 Bom. L. R. 483 = 1933 Cr. C. 663 = A.I.R. 1933 Bom. 229 = 144 I. C. 923 = 34 Cr. L J. 865.

In framing the rules the Local Government must make them so clear that one may read it while running and understand the same. In the case in 51 Mad. L. J. 416, it was held by the Madras High Court that a rule must be so clear that the owner must know whether he should take the car to the place which is the Head-quarter of the licensing authority, or whether the Officer-in-charge should fix a place for the inspection of the car.

The meaning of the word 'annually' used with reference to the renewal of licenses in the Madras Motor Vehicles Rules has been made clear by the Madras High Court. The word does not mean at the expiry of every twelve months but means once in a calendar year. *Public Prosecutor* v. *Ganapati Hegde*, A.I.R. 1927 Mad. 363=28 Cr. L. J. 1022=106 I. C. 110.

CHAPTER IV.

Control of Transport Vehicles.

Notes on Clauses.—This Chapter legislates specifically for the control of transport vehicles, *i e*, vehicles carrying passengers for hire or reward, or goods whether for hire or reward or otherwise Such vehicles are divided into four classes, namely :—

(*a*) Stage carriages, *i.e*, motor buses on regular or quasi-regular services ,

(*b*) Contract carriages, *i e*, taxis and other motor cabs, and buses used for special occasions ,

(*c*) Private carriers (of goods) , and

(*d*) Public carriers (of goods)

The general scheme is that the control of these separate classes of vehicles should be in the hands of transport authorities constituted for specified areas within the province ; and that for the purposes of co-ordination, hearing appeals, etc., there should also be constituted a tr ansport authority for the province. The constitution of these bodies is a matter upon which the Provincial Governments have particularly been consulted.

All motor transport vehicles must be covered by a permit issued by the transport authority of an area, and the effectiveness of every permit will depend on the observance by the holder of recognised general conditions such as the satisfactory maintenance of the vehicle, the observance of prescribed speed limits, and the avoidance of overloading the vehicle or overworking the drivers.

42. (1) No owner of a transport vehicle shall use or permit the use of the vehicle in any public place, save in accordance with the conditions of a permit granted or countersigned by a Regional or Provincial Transport Authority authorising the use of the vehicle in that place in the manner in which the vehicle is being used : Necessity for permits.

Provided that a stage carriage permit shall, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a contract carriage :

Provided further that a stage carriage permit may, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a goods vehicle either when carrying passengers or not :

Provided further that a public carrier's permit shall, subject to any conditions that may be specified in the permit, authorise the holder to use the vehicle for the carriage of goods for or in connection with a trade or business carried on by him.

(2) In determining, for the purposes of this Chapter, whether a transport vehicle is or is not used for the carriage of goods for hire or reward—

(*a*) the delivery or collection by or on behalf of the owner of goods sold, used or let on hire or hire-purchase in the course of any trade or business carried on by him other than the trade or business of providing transport,

(*b*) the delivery or collection by or on behalf of the owner of goods which have been or which are to be subjected to a process or treatment in the course of a trade or business carried on by him, or

(*c*) the carriage of goods in a transport vehicle by a manufacturer of or agent or dealer in such goods whilst the vehicle is being used for demonstration purposes,

shall not be deemed to constitute a carrying

of the goods for hire or reward, but the carriage in a transport vehicle of goods by a person not being a dealer in such goods who has acquired temporary ownership of the goods for the purpose of transporting them to another place and there relinquishing ownership shall be deemed to constitute a carrying of the goods for hire or reward.

(3) Sub-section (1) shall not apply—

(*a*) to any transport vehicle owned by or on behalf of the Central Government or a Provincial Government other than a vehicle used in connection with the business of an Indian State Railway;

(*b*) to any transport vehicle owned by a local authority or by a person acting under contract with a local authority and used solely for road cleansing, road watering or conservancy purposes;

(*c*) to any transport vehicle used solely for police, fire brigade or ambulance purposes;

(*d*) to any transport vehicle used solely for the conveyance of corpses;

(*e*) to any transport vehicle used for towing a disabled vehicle or for removing goods from a disabled vehicle to a place of safety;

(*f*) to any transport vehicle used for any other public purpose prescribed in this behalf;

(*g*) to any transport vehicle owned by, and used solely for the purposes of, any educational institution which is recognised by the

Provincial Government or whose managing committee is a society registered under the Societies Registration Act, 1860;

(*h*) subject to any prescribed conditions, to any transport vehicle owned by the Government of any Indian State or French or Portuguese Settlement bounded by India used for Government purposes unconnected with any commercial enterprise; or

(i) to any trailer used for any purpose other than the carriage of goods for hire or reward when drawn by a motor vehicle constructed for the carriage of not more than six passengers excluding the driver.

(4) Subject to the provisions of sub-section (3), sub-section (1) shall, if the Provincial Government by rule made under section 68 so prescribes, apply to any motor vehicle adapted to carry more than nine passengers excluding the driver.

Notes.

Notes on Clauses :—*Sections 42 (2), 52 and 53*.—The *bona fide* private carrier should not be required to justify his application in the face of opposition by other providers of transport although the private carrier will in other respects, *e.g.*, weight and speed limits, and safety regulations, be under the same obligation as the public carrier. All provinces, save one, have agreed that a differentiation between the two classes is necessary and that a private carrier should have a permit for identification on the road and to show that the vehicle is being rightly used. One province would make no distinction but the Bill follows the English practice in which this distinction is made. In England a private carrier's permit is easily obtained

because the granting of the permit is not open to opposition by providers of public transport.

Section 42 (4)—This sub-section will enable Provincial Governments to deal with private bus, control over which they may deem dersirable.

Changes made by the Select Committee:—The second proviso to sub-section (1) was inserted by the Select Committee. The alterations in sub-section (2) clauses (a) and (b) are formal. The Select Committee inserted a new clause (d) in this sub-section which was a provision contained in the English Road Traffic Act, 1933. It was, however, deleted in the course of the debates in the Legislative Assembly.

In sub-section (3) the Select Committee added two new classes of vehicle, by insertion of clauses (f) and (h) to those exempted from the provisions of sub-section (1), namely, vehicles used for certain public purposes, and vehicles used for State purposes by the Governments of Indian States or the Foreign Settlements Certain minor changes, of a formal consequential nature, were also made in this sub-section

Sub-section(1) —The penalty for contravention of the provisions of this sub-section has been provided for in section 123.

Sub-section 3. cl. (g) .—This clause was inserted in the course of the debates in the Legislative Assembly and was improved by an amendment in the Council of State with a view to provide to educational institutions facilities similar to those provided to the Central Government, the Provincial Governments, local authorities and police

43 (1) A Provincial Government, having regard to— *Power to Provincial Government to control road transport.*

(a) the advantages offered to the public, trade and industry by the development of motor transport, and

(b) the desirability of co-ordinating road and rail transport, and

(c) the desirability of preventing the deterioration of the road system, and

Provincial Government or whose managing committee is a society registered under the Societies Registration Act, 1860 ;

(*h*) subject to any prescribed conditions, to any transport vehicle owned by the Government of any Indian State or French or Portuguese Settlement bounded by India used for Government purposes unconnected with any commercial enterprise , or

(i) to any trailer used for any purpose other than the carriage of goods for hire or reward when drawn by a motor vehicle constructed for the carriage of not more than six passengers excluding the driver.

(4) Subject to the provisions of sub-section (3), sub-section (1) shall, if the Provincial Government by rule made under section 68 so prescribes, apply to any motor vehicle adapted to carry more than nine passengers excluding the driver.

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43. (1) A Provincial Government, having regard to— Power to Provincial Government to control road transport.

(*a*) the advantages offered to the public, trade and industry by the development of motor transport, and

(*b*) the desirability of co-ordinating road and rail transport, and

(*c*) the desirability of preventing the deterioration of the road system, and

(*d*) the desirability of preventing uneconomic competition among motor vehicles,

and after having heard the representatives of the interests affected and having consulted the Provincial and Regional Transport Authorities concerned, may, by notification in the official Gazette,—

(i) prohibit or restrict throughout the province or in any area or on any route within the province, subject to such conditions as it may think desirable, the conveying of long distance goods traffic generally, or of prescribed classes of goods, by private or public carriers ; or

(ii) fix maximum or minimum fares or freights for stage carriages and public carriers to be applicable throughout the province or within any area or any route within the province.

(2) The Provincial Government shall permit, at such intervals of time as it may fix, the interests affected by any notification issued under sub-section (1) to make representations urging the cancellation or variation of the notification on the following grounds, namely :—

(*a*) that the railways are not giving reasonable facilities or are taking unfair advantage of the action of the Provincial Government under this section ; or

(*b*) that conditions have changed since the publication of the notification ; or

(c) that the special needs of a particular industry or locality require to be considered afresh.

(3) If the Provincial Government, after considering any representation made to it under sub-section (2) and having heard the representatives of the interests affected and the Provincial and Regional Transport Authorities, is satisfied that any notification issued under sub-section (1) ought to be cancelled or varied, it may cancel the notification or vary it in such manner as it thinks fit.

Notes.

Changes made by the Select Committee.—This section, which vests in the Provincial Government certain powers of co-ordinating road and rail transport, was added by the Select Committee. In the provisions of the Bill relating to Transport Authorities the Select Committee revised the references to transport generally by using such expressions as "road transport" and "road passenger transport", indicating thereby that these Authorities will, in considering the relevant factors which are to be weighed by them, confine themselves to the interests of road traffic. The Select Committee considered that under existing conditions the Provincial Government itself was the authority in the best position to weigh against each other the conflicting interests of rail traffic and road traffic. This section contains the considerations to which regard should be had, and the powers which should be exercisable.

The Legislative Assembly amended clause (b) of sub-section (1) and inserted clause (d) in it.

44. (1) The Provincial Government shall, by notification in the official Gazette, constitute for the province a Provincial Transport Authority to exercise and discharge the powers and functions specified in sub-section (3), and shall in like manner constitute Regional Transport Authorities to exercise and discharge throughout such areas (in this Transport authorities.

Chapter referred to as regions) as may be specified in the notification, in respect of each Regional Transport Authority, the powers and functions conferred by or under this Chapter on such Authorities :

Provided that in the North-West Frontier Province and in Chief Commissioners' Provinces the Provincial Government may abstain from constituting any Regional Transport Authority :

Provided further that the area specified as the region of a Regional Transport Authority shall in no case be less than an entire district, or the whole area of a Presidency-town.

(2) A Provincial Transport Authority or a Regional Transport Authority shall consist of such member of officials and non-officials as the Provincial Government may think fit to appoint; but no person who has any financial interest whether as proprietor, employee or otherwise in any transport undertaking shall be appointed as or continue as a member of a Provincial or Regional Transport Authority, and, if any person being a member of any such Authority acquires a financial interest in any transport undertaking, he shall, within four weeks of so doing, give notice in writing to the Provincial Government of the acquisition of such interest and shall vacate office.

(3) A Provincial Transport Authority shall exercise and discharge throughout the province the following powers and functions, namely :—

(a) to co-ordinate and regulate the activities and policies of the Re-

gional Transport Authorities, if any, of the province ;

(b) to perform the duties of a Regional Transport Authority where there is no such Authority and, if it thinks fit or if so required by a Regional Transport Authority, to perform those duties in respect of any route common to two or more regions ;

(c) to settle all disputes and decide all matters on which differences of opinion arise between Regional Transport Authorities ; and

(d) to discharge such other functions as may be prescribed.

(4) For the purpose of exercising and discharging the powers and functions specified in sub-section (3), a Provincial Transport Authority may, subject to such conditions as may be prescribed, issue directions to any Regional Transport Authority and the Regional Transport Authority shall be guided by such directions.

Notes.

Notes on Clauses.—*Clause (1) of the Bill.*—The extent of the region and the constitution of the regional authority are left entirely to Provincial Governments, as it is impossible to specify in the Bill, except by way of the general indication given in clause (3), a constitution which would suit different conditions, sizes of region, etc., prevailing in each province

Clause (2) of the Bill.—The constitution of the provincial authority is permissive It may be required for purposes of co-ordination or to settle differences between regional authorities or to increase control over through routes. Some statutory basis is therefore required.

Clause (3) of the Bill.—This indicates how authorities may be constituted. What may suit one province may not suit

another; but if a composite authority is constituted containing representatives of transport interests, then it is only equitable that the main transport interests should be accorded equal representation.

Changes made by the Select Committee :—This section has been recast to make it mandatory on Provincial Governments to establish Provincial Transport Authorities, and except in the smaller provinces Regional Transport Authorities also, and to secure that the area of jurisdiction of the Regional Authorities shall be reasonably large. The Select Committee has provided that both Provincial and Regional Authorities shall be bodies composed of officials and non-officials but have not otherwise fettered the discretion of the Provincial Government in constituting them except by excluding persons having a financial interest in a transport undertaking. It has set more fully the functions of Provincial Transport Authorities, and has given them a power to issue directions to Regional Transport Authorities.

General provision as to applications for permits.

45. Every application for a permit shall be made to the Regional Transport Authority of the region or of one of the regions in which it is proposed to use the vehicle and, if the applicant resides or has his principal place of business in any one of those regions, to the Regional Transport Authority of that region.

Notes

Changes made by the Select Committee :—The Committee added the words "and, if the applicant resides or has his principal place of business in any one of those regions, to the Regional Transport Authority of that region" to clarify the section.

Application for stage carriage permit.

46. An application for a permit to use a motor vehicle as a stage carriage (in this Chapter referred to as a stage carriage permit) shall contain the following particulars, namely :—

(a) the type and seating capacity of

the vehicle in respect of which the application is made ;

(b) the route or routes on which or the area within which it is intended to use the vehicle ;

(c) the time table, if any, of the service to be provided ; and

(d) such other matters as may be prescribed.

Notes.

Changes made by the Select Committee :—The Select Committee has omitted the requirement that proposed fares are to be disclosed Such a provision would encourage rival applicants to under-bid each other. The other alteration is formal.

Procedure of Regional Transport Authority in considering application for stage carriage permit

47(1). A Regional Transport Authority shall, in deciding whether to grant or refuse a stage carriage permit, have regard to the following matters, namely :—

(a) the interest of the public generally;

(b) the advantage to the public of the service to be provided, including the saving of time likely to be effected thereby and any convenience arising from journeys not being broken ;

(c) the adequacy of existing road passenger transport services between the places to be served, the fares charged by those services and the effect upon those services of the service proposed ;

(d) the benefit to any particular locality or localities likely to be afforded by the service ;

(e) the operation by the applicant of other transport services and in

particular of unremunerative services in conjunction with remunerative services ; and

(f) the condition of the roads included in the proposed route or routes ;

and shall also take into consideration any representations made by persons already providing road transport facilities along or near the proposed route or routes or by any local authority or police authority within whose jurisdiction any part of the proposed route or routes lies or by any association interested in the provision of road transport facilities.

(2) A Regional Transport Authority shall refuse to grant a stage carriage permit if it appears from any time table furnished that the provisions of this Act relating to the speed at which vehicles may be driven are likely to be contravened :

Provided that before such refusal an opportunity shall be given to the applicant to amend the time table so as to conform to the said provisions.

Notes.

Notes on Clauses :—Sections 47, 50 and 55.—These sections lay down the general principles which should guide transport authorities in granting permits for stage or contract carriages or to public carriers. These embody the accepted principles of public necessity and convenience, the prevention of uneconomic competition, and the suitability of the roads to carry the forms of transport requiring the permits. In the case of public goods traffic, the principle adopted is that, while the transport of perishables by short distance transport by road in order to avoid delay and damage caused by terminal transhipment should not be interfered with, long distance traffic should be left primarily to railways.

Changes made by the Select Committee:—The words "including those of persons requiring and of persons providing facilities for the transport of passengers" omitted from clause

Amendment.

The Motor Vehicles (Amendment) Act, 1940 (Act No. XXVI of 1940) has introduced the following changes in section 48 of the Motor Vehicles Act, 1939, *viz*:—

(*a*) for clauses (*a*) and (*b*) the following clause has been substituted, namely:—

"(*a*) limit the number of stage carriages or stage carriages of any specified type for which stage carriage permits may be granted in the region or in any specified area or on any specified route within the region;";

(*b*) clauses (*c*), (*d*) and (*e*) has been re-lettered as clauses (*b*), (*c*) and (*d*), respectively;

(*c*) in clause (*d*) as so re-lettered, after sub-clause (*ii*) the following sub-clause has been inserted, namely:—

"(*iia*) that the stage carriage or stage carriages shall be used only on specified routes or in a specified area;".

The abovementioned amendment has been made to bring out the difference in intention of the legislature between section 48 and section 56.

(e) attach to a stage carriage permit any prescri ondition or any

particular of unremunerative services in conjunction with remunerative services ; and

should be left primarily to railways.

Changes made by the Select Committee:—The words "including those of persons requiring and of persons providing facilities for the transport of passengers" omitted from clause (a) are redundant, and would, if retained, include a reference to rail transport, which the Select Committee desired to eliminate. It similarly eliminated a reference to rail transport by its insertion of the word 'road" in clause (c). It also omitted as irrelevant the provision, contained in clause (g), requiring consideration of the character, qualifications and financial stability of the applicant. The other alterations are formal.

Sub-clause (2) of the original clause in the Bill has been omitted in view of its transfer of this power to the Provincial Government. Vide section 43.

The Select Committee added a proviso to sub-section (2) containing a reasonable relaxation.

Power to restrict the number of stage *carriages* and impose conditions on stage carriage permits.

48. A Regional Transport Authority may, after consideration of the matters set forth in sub-section (1) of section 47,—

(a) limit the number of stage carriages in respect of which stage carriage permits may be granted for a specified route or for specified routes or for a specified area ;

(b) limit the use of specified routes to stage carriages of a particular type or design ;

(c) issue a stage carriage permit in respect of a particular stage carriage or a particular service of stage carriages ;

(d) regulate timings of arrival or departure of stage carriages whether they belong to a single or more owners ; or

(e) attach to a stage carriage permit any prescribed condition or any

one or more of the following conditions, namely :—

(i) that the service specified in the permit shall be commenced not later than a specified date and be continued for a specified period ;

(ii) that the service may be varied only in accordance with specified conditions ;

(iii) that copies of the fare table and time table shall be exhibited on the stage carriage and that the fare table and time table so exhibited shall be observed ;

(iv) that not more than a specified number of passengers and not more than a specified amount of luggage shall be carried on any specified vehicle at any time ;

(v) that within municipal limits and in such other areas and places as may be prescribed passengers shall not be taken up or set down at or except at specified points ; or

(vi) that tickets shall be issued to passengers for the fares paid.

Notes.

Notes on clauses :—It was urged from more than one quarter that a route permit holder in return for the security given to him against unreasonable competition should maintain a regular service, *i. e.*, have the responsibilities of a public utility company. Accordingly in clause 45 (d) (ii) of

the Bill, provision was made for daily fines on him in the event of the service not being performed to the satisfaction of the Regional Transport Authority.

Changes made by the Select Committee:—The Select Committee omitted the provision for a condition in a permit enabling the Regional Transport Authority to inflict daily fines, and to regulate fares. It combined the two separate provisions relating to the exhibiting of fare and time tables, and their observation It confined the provision relating to halting stations to municipal areas and similar inhabited areas, and it inserted a provision enabling the issue of tickets to be insisted on

Application for contract carriage permit.

49. An application for a permit to use a motor vehicle as a contract carriage (in this Chapter referred to as a contract carriage permit) shall contain the following particulars, namely :—

(a) the type and sitting capacity of the vehicle ;

(b) the area for which the permit is required ;

(c) in the case of a motor vehicle other than a motor cab, the manner in which it is claimed that the public convenience will be served by the vehicle ; and

(d) any other particulars which may be prescribed.

Notes

Changes made by the Select Committee:—The Select Committee substituted the words "the type and seating capacity of the vehicle" in place of the words "the registration mark and the registered seating capacity of the vehicle if the vehicle has already been registered" in clause (a) The change is prompted by the consideration that at the time an application for a permit is made the vehicle may not have been registered.

Procedure of Regional Transport Authority in considering application for contract carriage permit.

50. A Regional Transport Authority shall, in deciding whether to grant or refuse a contract carriage permit, have regard to the extent to which additional contract carriages may be necessary or desirable in the public interest ; and shall also take into consideration any represensations which may then be made or which may previously have been made by persons already holding contract carriage permits in the region or by any local authority or police authority in the region to the effect that the number of contract carriages for which permits have already been granted is sufficient for or in excess of the needs of the region or any area within the region.

Notes.

Notes on Clauses —See notes under section 17.

Changes made by the Select Committee —The Select Committee omitted clauses (b) and (c). The essential part of clause (b) is already covered by clause (a), which has now been incorporated in the section, and in other respects it is too wide as including a reference to rail transport. Clause (c) has been omitted for the same reason which influenced the Select Committee in omitting the similar provision in section 47.

Power to restrict the number of contract carriages and impose conditions on contract carriage permits.

51. A Regional Transport Authority may, after consideration of the matters set forth in section 50,—

(a) limit the number of contract carriages generally or contract carriages of any specified type for which contract carriage permits may be granted in the region or any specified area within the region ;

(b) fix in the case of motor cabs the fares which may be charged ;

(c) require that every motor cab shall carry a copy of the fare table for inspection by passengers ;

(d) require that any motor cab shall be fitted with a taxi meter ; or

(e) impose on the use of a contract carriage any other condition which may be prescribed.

Notes.

Changes made by the Select Committee :—The alteration of clause (c) is a drafting amendment only. The Select Committee omitted the provision enabling restrictions to be placed on the use of a contract carriage as a stage carriage Clause (e) has been recast, to secure that the Provincial Government will control the nature of any additional conditions imposed.

Application for private carrier's permit.

52. An application for a permit to use a transport vehicle for the carriage of goods for or in connection with a trade or business carried on by the applicant (in this Chapter referred to as a private carrier's permit) shall contain the following particulars, namely :—

(a) the type and carrying capacity of the vehicle ;

(b) the nature of the goods which the the applicant expects normally to carry in connection with his trade or business ;

(c) the area for which the permit is required ; and

(d) any other particular which may be prescribed.

Notes.

Changes made by the Select Committee :—The change in clause (a) follows that made in section 49. The omission of the words "within the region" in clause (d), which is now clause (c) in this section, is necessitated by the fact that a permit might be required for two or more regions.

Procedure of Regional Transport Authority in considering application for a private carrier's permit.

53(1). A Regional Transport Authority shall, in deciding whether to grant or refuse a private carrier's permit, have regard to the condition of the roads to be used by the vehicle or vehicles in respect of which the application is made, and shall satisfy itself that the vehicle or vehicles for which the permit is required will not be used except in connection with the business of the applicant.

(2). The Regional Transport Authority may in granting a private carrier's permit impose conditions to be specified in the permit relating to the description of goods which may be carried, or the area in which the permit shall be valid, or the maximum laden weight and axle weights of any vehicle used.

(3). If the applicant is the holder of a private carrier's permit which has been suspended or has been the holder of a private carrier's permit which has been revoked, the Regional Transport Authority may at its discretion notwithstanding anything contained in sub-section (1) refuse the application.

Notes

Notes on Clauses :—**Clause (1).**—The roads generally are not fit for sustained heavy traffic and this is a consideration which must be taken into account.

Clause (2) – For instance, the owner of a sugar mill might hold a private carrier's permit to carry cane sugar, coal and mill stores within a radius of fifty miles from his mill. If found outside that radius or carrying other goods, breach of the conditions would occur.

Changes made by the Select Committee :—The omission of clause (1) (b) removes a reference to rail transport, a matter whose consideration the Select Committee transferred by the new section 43 to the Provincial Government. The other changes in clause (1) are formal.

A reference to axle weights has been inserted in clause (2).

Will not be used except :—These words have been substituted in place of the words "are necessary" in the course of the debates in the Legislative Assembly as it was thought that the Authority might have difficulty in satisfying itself as to the necessity in all cases and that the condition was a little unduly stringent After this amendment if the applicant gives an assurance that the vehicle or vehicles will be used for his own private business and no other and will not in any sense compete with a public carrier, the permit must be allowed, consistently with the facilities of the road

54. An application for a permit to use a motor vehicle for the carriage of goods for hire or reward (in this Chapter referred to as a public carrier's permit) shall contain the following particulars, namely :— Application for public carrier's permit.

(a) the routes on which or the area in which it is intended to use the vehicle ;

(b) the type and carrying capacity of the vehicle ;

(c) the manner in which it is claimed that a public need will be served by the vehicle ;

(d) such particulars as the Regional Transport Authority may require with respect to any business as a carrier of goods for hire or reward

carried on by the applicant at any time before the making of the application, and of the rates charged by the applicant;

(e) particulars of any agreement or arrangement, affecting in any material respect the provision within the region of the Regional Transport Authority of facilities for the transport of goods for hire or reward, entered into by the applicant with any other person by whom such facilities are provided, whether within or without the region; and

(f) any other particulars which may be prescribed.

Notes

Notes on Clauses :—Clause (d) of the Bill—The justification for using the roads for heavy goods traffic where alternative facilities exist depends to a large extent on the nature of the goods to be carried. For some the longer time taken by rail or water will be sufficient justification, for others the time factor can be largely discounted. Regional Authorities will have to exercise their discretion. This clause was deleted by the Select Committee.

Clause (e) of the Bill :—This is clause (c) of the present section. It is desirable that the applicant should be called upon to show public need, *i.e.*, with reference to particular classes of goods, or that certain firms had agreed to employ him.

Changes made by the Select Committee :—The change in clause (b) follows that already made in sections 49 and 52. The Select Committee omitted two clauses, *i.e.*, clauses (c) and (d) of the Bill, requiring the weight of the vehicle and the classes of goods carried to be stated, and had in their place two requirements contained in the English Road Traffic Act, 1933.

Procedure of Regional Transport Authority in considering application for public carrier's permit.

55. A *Regional Transport Authority* shall, in deciding whether to grant or refuse a public carrier's permit, have regard to the following matters, namely :—

(a) the interests of the public generally ;

(b) the advantages of the public service to be provided and the convenience afforded to the public by the provision of such service ;

(c) the adequacy of existing road transport services for the carriage of goods upon the routes or within the area to be served and the effect upon those services of the service proposed ;

(d) the benefit to any particular locality or localities likely to be afforded by the service ;

(e) the need for providing for occasions when vehicles are withdrawn from service for overhaul or repair ; and

(f) the condition of the roads included in the proposed routes or area ;

and shall also take into consideration any representations made by persons already providing road transport facilities along or near to the proposed route or routes or by any local authority within whose jurisdiction any part of the proposed route or routes lies.

Notes

Notes on Clauses :—These conditions are of common application ; clause (d) is intended to indicate that regional author-

ities should consider any representation that if they allow much highly rated traffic to be diverted from rail to road other railway freights will inevitably be raised. This clause was deleted by the Select Committee.

See also notes under section 47.

Changes made by the Select Committee:—The changes made are mainly in accordance with those already made in such sections as 47 and 53. Clause (h) of the Bill has been omitted because the substance is sufficiently covered by clauses (a) and (c)

Power to restrict the number of and attach conditions to public carrier's permits.

56. The Regional Transport Authority may, after consideration of the matters set forth in section 55,—

(a) limit the number of transport vehicles or transport vehicles of any specified type for which public carrier's permits may be granted in the region or in any specified area or on any specified routes within the region ; or

(b) attach to a public carrier's permit all or any of the following conditions, namely :—

(i) that the vehicle shall be used only on specified routes or in a specified area,

(ii) that the laden weight and axle weights of any vehicle used shall not exceed a specified maximum,

(iii) that such records as may be prescribed relating to the plying of the vehicle shall be maintained, and

(iv) any other prescribed condition appropriate to the service to be

provided by the vehicle which the Regional Transport Authority thinks proper to impose in the public interest or with a view to prevent uneconomic competition between road transport services.

Notes

Changes made by the Select Committee :—The chief alterations made are the omission of references in clause (b) to limitations on the classes of goods that may be carried, or the persons for whom goods may be carried, and in clause (iv), *i e*, clause (vi) of the Bill, the exclusion of a reference to anything but road transport.

Procedure in applying for and granting permits.

57 (1) An application for a contract carriage permit or a private carrier's permit may be made at any time.

(2) An application for a stage carriage permit or a public carrier's permit shall be made not less than six weeks before the date on which it is desired that the permit shall take effect, or, if the Regional Transport Authority appoints dates for the receipt of such applications, on such dates.

(3) On receipt of an application for a stage carriage permit or a public carrier's permit, the Regional Transport Authority shall make the application available for inspection at the office of the Authority and shall publish the application or the substance thereof in the prescribed manner together with a notice of the date before which representations in connection therewith may be submitted and the date, not being less than thirty days from such publication, on which, and the time and place at which, the appli-

cation and any representations received will be considered.

(4) No representation in connection with an application referred to in sub-section (3) shall be considered by the Regional Transport Authority unless it is made in writing before the appointed date and unless a copy thereof is furnished simultaneously to the applicant by the person making such representation.

(5) When any representation such as is referred to in sub-section (3) is made, the Regional Transport Authority shall dispose of the application at a public hearing at which the applicant and the person making the representation shall have an opportunity of being heard either in person or by a duly authorised representative.

(6) When any representation has been made by the persons or authorities referred to in section 50 to the effect that the number of contract carriages for which permits have already been granted in any region or any area within a region is sufficient for or in excess of the needs of the region or of such area, whether such representation is made in connection with a particular application for the grant of a contract carriage permit or otherwise, the Regional Transport Authority may take any such steps as it considers appropriate for the hearing of the representation in the presence of any person likely to be affected thereby.

(7) When a Regional Transport Authority refuses an application for a permit of any kind, it shall give to the applicant in writing its reasons for the refusal.

Notes.

Changes made by the Select Committee :—The changes made are formal in nature and contain no point of principle.

Sub-section (5) :—The insertion of the words "either by person or by a duly authorised representative," at the end of this sub section, was made by the Select Committee This has the effect of giving a right of representation by a pleader.

58 (1) A permit other than a temporary permit issued under section 62 shall be effective without renewal for such period, not less than three years and not more than five years, as the Regional Transport Authority may in its discretion specify in the permit Duration and renewal of permits.

Provided that in the case of a permit issued or renewed within two years of the commencement of this Act, the permit shall be effective without renewal for such period of less than three years as the Provincial Government may prescribe.

(2) A permit may be renewed on an application made and disposed of as if it were an application for a permit ·

Provided that, other conditions being equal, an application for renewal shall be given preference over new applications for permits.

Notes.

Changes made by the Select Committee :—The period of validity of a permit has been fixed at a minimum of three years with a possible maximum of five years and a saving proviso has been inserted securing preference for holders of permits over applicants for new permits.

Proviso to sub-section (1) :—This proviso was added, in the course of debates in the Legislative Assembly, on the motion of Mr. K. G. Mitchell who said "The position is briefly this. My information is that in some provinces they have not got a regular permit system in force and, therefore, permits will have to be issued for the first time to a number of vehicles according as they can determine on what routes they are actually running. In some provinces they have very wide permits and, actually, where the vehicles are running or not is settled by arrangement among the vehicle owners. Therefore, it is possible that in the first allotment of permits certain mistakes may be made and in order not to perpetuate those mistakes for three years, we wish to have this provision that for the two years from the commencement of the Act permits may be issued for a lesser period than three years as prescribed by the Provincial Government." Vide Legislative Assembly Debates, dated 12. 9. 38, Vol. VI - No. 1, Page 2231.

General conditions attaching to all permits.

59(1) Save as provided in section 61, a permit shall not be transferable from one person to another except with the permission of the transport authority which granted the permit and shall not without such permission operate to confer on any person to whom a vehicle covered by the permit is transferred any right to use that vehicle in the manner authorised by the permit.

(2) The holder of a permit may, with the permission of the authority by which the permit was granted, replace by another vehicle of the same nature and capacity any vehicle covered by the permit.

(3) The following shall be conditions of every permit—

(a) that the vehicle or vehicles to which the permit relates are at all times so maintained as to comply with the requirements of Chapter V and the rules made thereunder ;

(b) that the vehicle or vehicles to which the permit relates are not driven at a speed exceeding the speed lawful under this Act ;

(c) that any prohibition or restriction imposed and any maximum or minimum fares or freights fixed by notification made under section 43 are observed in connection with any vehicle or vehicles to which the permit relates ;

(d) that the vehicle or vehicles to which the permit relates are not driven in contravention of the provisions of section 72 ;

(e) that the provisions of this Act limiting the hours of work of drivers are observed in connection with any vehicle or vehicles to which the permit relates ; and

(f) that the provisions of Chapter VIII so far as they apply to the holder of the permit are observed.

Notes.

Changes made by the Select Committee.—The changes made in sub section (1) enable permits to be transferred with the permission of the Transport Authority. In sub-section (3) the Select Committee added two additional conditions, i e, clauses (e) and (f), to those deemed to be attached to the holding of a permit.

60(1). The Transport Authority which granted a permit may cancel the permit or may suspend it for such period as it thinks fit— Cancellation and suspension of permit

(a) on the breach of any condition specified in sub-section (3) of section 59, or of any condition contained in the permit, or

(b) if the holder of the permit uses or causes or allows a vehicle to be used in any manner not authorised by the permit, or

(c) if the holder of the permit ceases to possess the vehicle or vehicles covered by the permit, or

(d) if the holder of the permit has obtained the permit by fraud or misrepresentation :

Provided that no permit shall be cancelled unless an opportunity has been given to the holder of the permit to submit his explanation.

(2) Where a Transport Authority cancels or suspends a permit, it shall give to *the holder in writing its reasons for the* revocation or suspension.

Notes.

Changes made by the Select Committee :—The changes made in sub-sections (1) and (2) are formal. Sub-clause (3) of the Bill has been omitted as unnecessary, particularly in view of the new provisions inserted as section 61.

Proviso to sub-section (1) :—This was added in the course of the debates in the Legislative Assembly.

Suit for improper cancellation of permit—In the case of *Secretary of State* v. *Ganapati Somayya*, 97 Ind. Cas. 617 = A. I. R. 1926 Madras 1084 = 51 M. L. J. 416 = 25 M. L. W. 378, the plaintiff was the owner of two motor buses called the "Republic" and the "Albion" which plied between Ellore and Chintalpudi. He instituted the suit against the Secretary of State for India represented by the Collector of Kistna for

unliquidated damages caused to him by the improper cancellation of his licence. Under the Madras Motor Vehicles Rules, which have the force of law, the District Magistrate is vested by Rule 30 with the power of issuing permits in form G for motor vehicles which are intended to be let or plied for hire outside the City of Madras. One of the conditions in form G is that the owner of the vehicle if it be a motor bus, shall arrange for its examination once in every six months by a person approved by the District Magistrate. It appears that the District Magistrate cancelled the license for the bus "Republic" because it was not examined by the District Board Engineer as required by the permit. The District Board Engineer was a little negligent in not inspecting the vehicle when it was produced for inspection.

Assuming, however, that the District Magistrate committed an error of judgment in cancelling the license and that the blame for the bus not being examined as required by the conditions of the permit lay more with the Engineer than with the plaintiff, the question for decision is whether the Government is on that account liable for damages. The District Magistrate both in issuing the license and in cancelling it, was acting in pursuance of a statutory authority vested in him. In such a case it was held in *Shivabhajan v. Secretary of State for India*, 28 Bom 314 and *Ross v Secretary of State for India*, 39 Mad 781 that the Government was not liable for the conduct of its servants. Sudasiva Aiyar J, in the latter decision pointed out that the Crown could not be made liable for the action of a Government servant purporting to act under a statutory power conferred upon him, because his action when he purports to exercise a statutory power is not as agent of the Crown and he quotes the leading case of *Tobin v. The Queen*, (1864) 16 C B (N S) 310. In *Shivabhajan v. Secretary of State for India*, a chief constable seized goods in pursuance of a statutory power vested in him under s 550, Cr. P. C. The goods being perishable were not forthcoming when the plaintiff demanded them The learned Judges referred to the liability under Statute 21 and 22 Vict. C 106 which now are represented by the Government of India Act, S. 32. In that case, as in the present case, it could not be contended that the act of the chief constable was in any sense productive of benefit to the revenues of the Government, nor was it a transaction out of which profit could be derived, and the Government had not ratified or adopted the act. In the

present case the Government derived no profit by the cancellation of the license.

This case does not resemble the case in *Wasappa Timmappa Sonagar* v. *Secretary of State*, 40 Bom. 200, where the Government retained the proceeds of the sale of property which rightfully belonged to the plaintiff. Nor is it like the case in *Mothi Rungaya Chetty* v. *Secretary of State for India*, 28 Mad. 213, where the Post Office were held liable as carriers of value payable parcels when they delivered a parcel without obtaining payment from the consignee and remitting the value to the sender *Vijaya Ragava* v. *Secretary of State for India*, 7 Mad 466 (F. B.) was an instance where the Government removed a Municipal Commissioner for misconduct. The act which the Judges treated as a tort was an act of the Government itself and not one of its servants. The soundness of the decision has been doubted. *Kailash Chandra Nag* v. *Secretary of State for India*, 40 Cal. 452 : 17 C. W. N 315 : 17 C. L. J. 216, was a case where the plaintiff sued to recover money illegally collected by a Deputy Collector when the Act only authorised the District Magistrate to apportion the tax due on account of a punitive police force That was an instance where the Government servant concerned was not acting in pursuance of a statutory authority. It was held that the Government was not responsible for the act of the District Magistrate in cancelling the permit assuming that District Magistrate acted in error in so doing.

This concludes the case as regards the bus "Republic." The question, whether the public officers can at all be held responsible for their *bona fide* action which they took in discharge of their duties and can be sued for damages, was raised but not decided in *Ali Reza Khan* v. *Abdul Rauf* A. I. R. 1935 Oudh 457 (459) = 10 Luck. 517 = 1935 O. W. N. 20 = 151 I. C. 31 = 1935 C. L. R. 131.

Transfer of permit on death of holder.

61 (1). Where the holder of a permit dies, the person succeeding to the possession of the vehicles covered by the permit may, for a period of three months, use the permit as if it had been granted to himself :

Provided that such person has, within thirty days of the death of the holder, in-

formed the transport authority which granted the permit of the death of the holder and of his own intention to use the permit :

Provided further that no permit shall be so used after the date on which it would have ceased to be effective without renewal in the hands of the deceased holder.

(2). The transport authority may, on application made to it within three months of the death of the holder of a permit, transfer the permit to the person succeeding to the possession of the vehicles covered by the permit.

Notes

Changes made by the Select Committee —The Select Committee inserted this section where provision is made on more comprehensive lines than were contained in clauses 56 and 57 of the Bill for the temporary transfer of permits on the death of a holder.

62. (1) A Regional Transport Authority may at its discretion, and without following the procedure laid down in section 57, grant permits, to be effective for a limited period not in any case to exceed four months, to authorise the use of a transport vehicle temporarily— Temporary *permits.*

(a) for the conveyance of passengers on special occasions such as to and from fairs and religious gatherings, or

(b) for the purpose of seasonal business, or

(c) to meet a particular temporary need, and may attach to any such permit any condition it thinks fit.

(2) A Regional Transport Authority may delegate all or any of its powers under this section to any one of its members.

Notes.

Changes made by the Select Committee :—The Select Committee reduced the period of validity of a temporary permit *from six to four months. Clause (a) of the Bill, which provided* for a temporary permit pending the disposal of an application for a permanent one, has been omitted as unnecessary ; but the Select Committee added a power to delegate the function of issuing temporary permits so that they may be issued without the necessity for a formal meeting of the Transport Authority.

Validation of permits for use outside region in which granted

63. (1) Except as may be otherwise prescribed, a permit granted by the Regional Transport Authority of any one region shall not be valid in any other region, unless the permit has been countersigned by the Regional Transport Authority of that other region, and a permit granted in any one province shall not be valid in any other province unless countersigned by the Provincial Transport Authority of that other province or by the Regional Transport Authority concerned.

(2) A Regional Transport Authority when countersigning the permit may attach to the permit any condition which it might have imposed if it had granted the permit, and may likewise vary any condition attached to the permit by the Authority by which the permit was granted.

(3) The provisions of this Chapter relating to the grant, revocation and suspension of permits shall apply to the grant, revocation and suspension of countersignatures of permits.

(4) Notwithstanding anything contained in sub-section (1), a Regional Transport Authority of one region may issue a temporary permit under clause (a) or clause (c) of sub-section (1) of section 62 to be valid in another region or province with the concurrence, given generally or for the particular occasion, of the Regional Transport Authority of that other region or of the Provincial Transport Authority of that other province, as the case may be.

Notes.

Notes on Clauses :—Clause (1).—Provision has been made in sub-clause (2) (i) of section 68 for rules whereby provincial authorities may make mutual arrangements for validating permits outside their jurisdiction without counter-signature

Clause (4) —This is necessary particularly for temporary permits for vehicles for feasts, wedding, funerals, etc

Changes made by the Select Committee —In clause (1) the added words clarify the procedure where the permit is to be used in two separate provinces The alteration in clause (4) adds a necessary reference which was omitted in the Bill

Sub-section (2) :—The words "and may likewise" were substituted in place of the words "or may" in the course of the debates in the Council of State with the object that even the variation or modification should be under the same restrictions as may be originally imposed and no stricter conditions may be imposed.

Sub-section (4) :—The words "or province" were inserted after the words "another region" in the course of the debates in the Legislative Assembly with a view to vest powers in a Regional Transport Authority to issue a temporary permit to be valid even in another province. The addition of the words "or of the Provincial Transport Authority of that other province as the case may be" at the end of this sub-section is purely consequential on the preceding amendment.

64. Any person—

(a) aggrieved by the refusal of the Provincial or a Regional Trans- Appeals

port Authority to grant a permit, or by any condition attached to a permit granted to him, or

(b) aggrieved by the revocation or suspension of the permit or by any variation of the conditions thereof, or

(c) aggrieved by the refusal to transfer the permit to the person succeeding on the death of the holder of a permit, or

(d) aggrieved by the refusal of the Provincial or a Regional Transport Authority to countersign a permit, or by any condition attached to such countersignature, or

(e) aggrieved by the refusal of renewal of a permit, or

(f) being a local authority or police authority or an association which, or a person providing transport facilities who, having opposed the grant of a permit, is aggrieved by the grant thereof or by any condition attached thereto, or

(g) being the holder of a licence, who is aggrieved by the refusal of a Regional Transport Authority to grant an authorisation to drive a public service vehicle,

may, within the prescribed time and in the prescribed manner, appeal to the prescribed authority who shall give such person and the original authority an opportunity of being heard.

Notes.

Changes made by the Select Committee :—A reference to the Provincial Transport Authority has been inserted in clause (a), and an additional ground of appeal has been added by the new clause (c), [now clause (d) of this Act]. The change in original clause (c), [now clause (f) of this Act], is consequential on that made in clause 46 (1), now section 47 (1) of this Act.

Sub-sections (c) and (e) :—These were added in the course of the debates in the Legislative Assembly.

Right of representation :—The words "who shall give such person and the original authority of being heard" were added at the end of this section in the course of the debates in the Legislative Assembly with a view to give statutory right of hearing to the appellant and the original authority

Restriction of hours of work of drivers

65. (1) No person shall cause or allow any person who is employed by him for the purpose of driving a transport vehicle or who is subject to his control for such purpose to work—

(a) for more than five hours before he has had an interval of rest of at least half an hour ; or

(b) for more than nine hours in one day ; or

(c) for more than fifty-four hours in the week.

(2) The Provincial Government may by rule made under section 68 grant such exemptions from the provisions of sub-section (1) as it thinks fit, to meet cases of emergency or of delays by reason of circumstances which could not be foreseen.

(3) The Provincial Government may require persons employing any persons whose work is subject to any of the provisions

of sub-section (1) to fix beforehand the hours of work of such persons so as to conform with those provisions, and may provide for the recording of the hours so fixed.

(4) No person shall work or shall cause or allow any other person to work outside the hours fixed or recorded for the work of such persons in compliance with any rule made under sub-section (3).

(5) The Provincial Government may prescribe the circumstances under which any period during which the driver of a vehicle although not engaged in work is required to remain on or near the vehicle may be deemed to be an interval for rest within the meaning of sub-section (1).

Notes.

Notes on Clauses :—These provisions are desirable but are not likely to be generally enforced until more regularly timed services are established. But they will be used against an owner in the event of an accident where the driver has been grossly overworked and also in well-known cases of abuse.

Changes made by the Select Committee :—This section has been recast and expanded by the Select Committee. A limit of fifty-four hours' work per week has been introduced. The limit for a period of continuous work has been raised from ten to eleven hours. Provision has been made for the keeping of records of working hours in order to facilitate enforcement of the provisions of the section

Changes made by the Legislative Assembly :—The period of working without interval was reduced from five and half hours to five hours. The hours of work in one day were reduced from eleven hours to nine hours. Clause (2) of this section, which purported to give authority to the Provincial Government to extend the restrictions contained in sub-section (1) of this section to drivers of such motor vehicles as may be prescribed, was deleted.

English Law :—Section 19 of the Road Traffic Act, 1930, section 31 of the Road and Rail Traffic Act, 1933 and section 7

of the Road Traffic Act, 1934 correspond to this section and run as follows —

19. (1) With a view to protecting the public against the risks which arise in cases where the drivers of motor vehicles are suffering from excessive fatigue, it is hereby enacted that it shall not be lawful in the case of—

Limitation of time for which drivers of certain vehicles may remain continuously on duty.

(a) any public service vehicle within the meaning of Part IV of this Act,

(b) any heavy locomotive, light locomotive or motor tractor, or

(c) any motor vehicle constructed to carry goods other than the effects of passengers;

for any person to drive or cause or permit any person employed by him or subject to his orders to drive—

(i) for any continuous period of more than five hours and one half; or

(ii) for continuous periods amounting in the aggregate to more than eleven hours in any period of twenty-four hours commencing two hours after midnight; or

(iii) so that the driver has not at least ten consecutive hours for rest in any period of twenty-four hours calculated from the commencement of any period of driving·

Provided that it shall be a sufficient compliance with the provisions of paragraph (iii) if the driver has at least nine consecutive hours for rest in any such period of twenty-four hours provided that he has an interval of at least twelve consecutive hours for rest in the next following period of twenty-four hours.

(2) For the purposes of this section—

(a) any two or more periods of time shall be deemed to be a continuous period unless separated by an interval of not less than half an hour in which the driver is able to obtain rest and refreshment;

(b) any time spent by a driver on other work in connection with a vehicle or the load carried thereby

cluding in the case of a public service vehicle any time spent on a vehicle while on a journey in any other capacity than as a passenger shall be reckoned as time spent in driving ;

(c) in the case of a vehicle which is being used in the course of operations of agriculture or forestry a person shall not be deemed to be driving the vehicle or to be spending time on work in connection with the vehicle or the load carried thereby so long as the vehicle is elsewhere than on a road.

(3) The Minister may, on the application of a joint industrial council, conciliation board, or other similar body, or on a joint application by such organisations, representative of employers and work people in the industry, as the Minister of Labour may certify to be proper bodies to make such an application, and after referring the matter to the Industrial Court for advice, by order vary the periods of time prescribed in this section, provided that he is of opinion that such variation is not likely to be detrimental to the public safety.

Any order made under this sub-section may be revoked or varied by a subsequent order made in like manner and subject to like conditions.

(4) If any person acts in contravention of this section, he shall be guilty of an offence :

Provided that a person shall not be liable to be convicted under this section if he proves to the Court that the contravention was due to unavoidable delay in the completion of any journey arising out of circumstances which he could not reasonably have foreseen.

(5) This section shall not apply to motor vehicle used for fire brigade or ambulance purposes.

Amendment of s. 19 of Road Traffic Act, 1930.

31. (1) For the purposes of those provisions of subsection (1) of section nineteen of the Road Traffic Act, 1930 (as varied or amended by any order or subsequent enactment) which relate to the number of consecutive hours for rest which a driver is to have in any specified period, time during which the driver is bound by the terms of his employment to obey the directions of his employer, or to remain on or near the vehicle, or during which the vehicle is at a place where no reasonable facilities exist for the driver to rest away from the

vehicle, shall be deemed not to be time which the driver has for rest.

(2) Sub-section (3) of the said section nineteen shall have effect as if for the words "or on a joint application by such organisations, representative of employers and work people in the industry, as the Minister of Labour may certify to be proper bodies to make such an application" there were substituted the words "or on an application by any such organisation, representative of employers or work people in the industry, as the Minister of Labour may certify to be a proper body to make such an application"

7. (1) An order varying the periods of time prescribed in section nineteen of the principal Act (which relates to the time for which drivers of certain vehicles may remain continuously on duty) may be made under sub section (3) of the said section so as to have effect only as respects a particular class of public service vehicles, or only as respects public service vehicles when used in particular circumstances — Amendment of *s cl. (3) of* s. 19 of the principal Act.

(2) Where an application is made under the said subsection (3) as respects drivers of stage carriages when used either—

(a) on regular services under a road service license to which a condition requiring the observance of a time table is attached ; or

(b) on regular services in respect of which no road service license is required ,

then, if it is shown to the satisfaction of the Industrial Court and the Minister that the conditions under which the services are operated are such as to secure that the periods deemed to be continuous periods for the purposes of the said section during which the vehicles are driven include times in which the drivers are able to obtain rest and refreshment, the Industrial Court in advising on the application, and the Minister in giving his determination thereon, may have regard to those conditions

66. Any contract for the conveyance of a passenger in a stage or contract carriage, in respect of which a permit has been issued under this Chapter, shall, so far as it pur- — Voidance of contracts restrictive of liability.

ports to negative or restrict the liablity of any person in respect of any claim made against that person in respect of the death of, or bodily injury to, the passenger while being carried in, entering or alighting from the vehicle, or purports to impose any conditions with respect to the enforcement of any such liability, be void.

Power to make rules as to stage carriages and contract carriages

67. (1) A Provincial Government may make rules to regulate, in respect of stage carriages and contract carriages,—

(a) the conduct of persons licensed to act as drivers of, and the licensing of and the conduct of conductors of, such vehicles when acting as such ; and

(b) the conduct of passengers in such vehicles.

(2) Without prejudice to the generality of the foregoing provision, such rules may—

(a) authorise the removal from such vehicle of any person infringing the rules by the driver or conductor of the vehicle, or on the request of the driver or conductor, or any passenger by any police officer ;

(b) require a pàssenger who is reasonably suspected by the driver or conductor of contravening the rules to give his name and address to a police officer or to the driver or conductor on demand ;

(c) require a passenger to declare, if so requested by the driver or conductor, the journey he intends to

take or has taken in the vehicle and to pay the fare for the whole of such journey and to accept any ticket provided therefor ;

(d) require, on demand being made for the purpose by the driver or conductor or other person authorised by the owner of the vehicle, production during the journey and surrender at the end of the journey by the holder thereof of any ticket issued to him ;

(e) require a passenger, if so requested by the driver or conductor, to leave the vehicle on the completion of the journey the fare for which he has paid ,

(f) require the surrender by the holder thereof on the expiry of the period for which it is issued of a ticket issued to him ;

(g) require the maintenance of complaint books in stage carriages and prescribe the conditions under which passengers can record any complaint in the same.

Notes

Changes made by the Legislative Assembly .—
Clause (g) was inserted in the course of the debates in the Legislative Assembly

68. (1) A Provincial Government may make rules for the purpose of carrying into effect the provisions of this Chapter.

Power to make rules for the purposes of this chap

(2) Without prejudice to the generality of the foregoing power, rules under this sec-

tion may be made with respect to all or any of the following matters, namely :—

(a) the period of appointment and the terms of appointment of and the conduct of business by Regional and Provincial Transport Authorities and the reports to be furnished by them ;

(b) the conduct and hearing of appeals that may be preferred under this Chapter ;

(c) the forms to be used for the purposes of this Chapter, including the forms of permits ;

(d) the issue of copies of permits in place of permits lost or destroyed;

(e) the documents, plates and marks to be carried by transport vehicles, the manner in which they are to be carried and the languages in which any such documents are to be expressed ;

(f) the badges and uniform to be worn by drivers and conductors of stage carriages and contract carriages ;

(g) the fees to be paid in respect of permits, duplicate permits, plates and badges ;

(h) the custody, production and cancellation on revocation or expiration of permits, and the return of permits which have become void or have been revoked ;

(i) the conditions subject to which a permit issued in one region shall be valid in another region ;

(j) the authorities to whom, the time within which and the manner in which appeals may be made ;

(k) the construction and fittings of, and the equipment to be carried by, stage and contract carriages, whether generally or in specified areas ;

(l) the determination of the number of passengers a stage or contract carriage is adapted to carry and the number which may be carried,

(*m*) the *conditions subject to* which goods may be carried on stage and contract carriages partly or wholly in lieu of passengers ;

(n) the safe custody and disposal of property left in a stage or contract carriage ;

(o) prohibiting the painting or marking of a stage or contract carriage in such colour or manner as to induce any person to believe that the vehicle is used for the transport of mails ;

(p) the conveyance in stage or contract carriages of corpses or persons suffering from any infectious or contagious disease or goods likely to cause discomfort or injury to passengers and the inspection and disinfection of such carriages, if used for such purposes ;

(q) the provision of taxi meters on motor cabs requiring approval or standard types of taxi meters to

be used and examining, testing and sealing taxi meters ;

(r) prohibiting the picking up or setting down of passengers by stage or contract carriages at specified places or in specified areas or at places other than duly notified stands or halting places and requiring the driver of a stage carriage to stop and remain stationary for a reasonable time when so required by a passenger desiring to board or alight from the vehicle at a notified halting place ;

(s) the requirements (including the provision of proper sanitary arrangements) which shall be complied with in any duly notified stand or halting place ;

(t) requiring the owners of transport vehicles to notify any change of address or to report the failure of or damage to any vehicle used for the conveyance of passengers for hire or reward ;

(u) requiring the person in charge of a stage carriage to carry any person tendering the legal or customary fare ;

(v) the conditions under which and the the types of containers or vehicles in which animals or birds may be carried and the seasons during which animals or birds may or may not be carried ;

(w) the licensing of and the conduct of agents for the sale of tickets for travel by stage carriages ;

(x) the inspection of transport vehicles and their contents and of the permits relating to them ;

(y) the carriage of persons other than the driver in goods vehicles ;

(z) the records to be maintained and returns to be furnished by the owners of transport vehicles ; and

(za) any other matter which is to be or may be prescribed.

Notes.

Changes made by the Select Committee :—Clause (j) of the Bill has been omitted as section 65 adequately provides for all matters connected with hours of work. The other changes made are self-explanatory, and are aimed at supplementing minor deficiencies in the rule-making power.

Clause (b) .—This clause was inserted in the course of the debates in the Legislative Assembly.

CHAPTER V.

Construction, Equipment and Maintenance of Motor Vehicles.

General provision regarding construction and maintenance.

69. Every motor vehicle shall be so constructed and so maintained as to be at all times under the effective control of the person driving the vehicle.

Power to make rules.

70. (1) A Provincial Government may make rules regulating the construction, equipment and maintenance of motor vehicles and trailors.

(2) Without prejudice to the generality of the foregoing power, rules may be made under this section governing any of the following matters either generally in respect of motor vehicles or trailers or in respect of motor vehicles or trailers of a particular class or in particular circumstances, namely :—

(a) the width, height, length and overhang of vehicles and of the loads carried ;

(b) seating arrangements in public service vehicles and the protection of passengers against the weather ;

(c) the size, nature and condition of tyres ;

(d) *breaks and steering gear ;*

(e) the use of safety glass ;

(f) signalling appliances, lamps and reflectors ;

(g) speed governors ;

(h) the emission of smoke, visible vapour, sparks, ashes, grit or oil ;

(i) the reduction of noise emitted by or caused by vehicles ;
(j) prohibiting or restricting the use of audible signals at certain times or in certain places ;
(k) prohibiting the carrying of appliances likely to cause annoyance or danger ;
(l) the periodical testing and inspection of vehicles by prescribed authorities ;
(m) the particulars other than registration marks to be exhibited by vehicles and the manner in which they shall be so exhibited ; and
(n) the use of trailers with motor vehicles.

Notes

Notes on Clauses :—The rule-making powers outlined in this section are unavoidable. Although uniformity in respect of rules in this Chapter is desirable, such rules cannot conveniently be incorporated in the Bill owing to periodical changes in the designs of vehicles from time to time.

Changes made by the Select Committee :—The Select Committee added clause (b) to give powers to regulate seating accommodation and provision for the comfort of passengers in passenger-carrying vehicles.

Lamps :—Under the Punjab Motor Vehicles Rules the owner could not be convicted because his servants drove the car without lights after lighting up time. *Sohan Singh* v. *Emp.*, 27 P. R. 1918 (Cr.) = 19 Cr. L. J. 928 = 47 I. C 447 = 37 P.W.R. 1918 (Cr = 15 P.L R. 1919)

In case of defective lighting time is of the essence of the offence and it must be proved beyond reasonable doubt and by reliable evidence. The vague statement of the Police Officer deposing in the Court that the offence took place sometime after dusk or about 7 p m , does not give any assistance to the Court for proper decision of the case. *Allu* v. *Emp.*, 27 Cr. L.J. 1072 = 97 I.C. 48 = 7 P.L.T. 542 = A.I.R. 1926 Pat. 416.

According to the United Province Rules X no person shall drive a motor vehicle during the period commencing half an hour after sunset and ending half an hour before sunrise unless such vehicle is provided with lights as follows :—

(1) In the case of vehicles other than motor cycles—

(a) One lamp showing a white light in front affixed on each side of the front portion of the vehicle ;

(b) One lamp showing a red light at the rear, showing a white light at the side affixed at the back of the vehicle in such manner as to illuminate with the white light and render easily distinguishable the signs and numbers on the plates.

It was held by the Allahabad High Court when two lamps were on each side of the front portion of the vehicle showing a white light, the driver cannot be convicted according to law. Front portion is not the back of the vehicle. It may not be the extreme end of the bunnet or the extreme end of the front but the portion which is outside the space where the steering wheel is kept. The rule requires three lights, two in front and one in back *Mahamad Syed* v. *Emp*, 16 A. L. J. 623=19 Cr. L. J. 860=46 I C. 1001.

See also Notes under sec. 112.

CHAPTER VI.

Control of Traffic.

71. (1) No person shall drive a motor vehicle or cause or allow a motor vehicle to be driven in any public place at a speed exceeding the maximum speed fixed for the vehicle or by or under this Act or by or under any law for the time being in force : Limits of speed

Provided that such maximum speed shall in no case exceed the maximum fixed for the vehicle in the Eighth Schedule.

(2) The Provincial Government or any authority authorized in this behalf by the Provincial Government may, if satisfied that it is necessary to restrict the speed of motor vehicles in the interests of public safety or convenience or because of the nature of any road or bridge, by notification in the Official Gazette, fix such maximum speed limits as it thinks fit for motor vehicles or any specified class of motor vehicles or for motor vehicles to which a trailer is attached, either generally or in a particular area or on a particular road or roads.

Notes

premium rates should be uniform throughout India. If mechanical speed governors are introduced, as is to be hoped, they must be set for a certain speed and be sealed by some authority. A governor set for the legal speed in one province may be illegal in another if there is a difference in speed limits. Uniform reasonable speed limits coupled with the compulsory use of speed governors will tend to reduce not only accidents but also premium rates.

Changes made by the Select Committee :—The changes made are intended to express more clearly the intention of the section as drafted. In the case of certain vehicles the Eighth Schedule fixes no maximum speed limit. But where such maximum speeds are fixed they are to be effective for the purposes of sub-section (1).

The proviso has been added by the Select Committee.

Allow :—To allow a thing to be done or to be omitted there must be some direct or indirect sanction of it, unlike the mere responsibility of an inn-keeper, if he suffers things to be done contrary to the licensing Acts.

Penalty :—The penalty for driving or causing a motor vehicle to be driven in contravention of the provisions of this section has been provided for in section 115.

Limits of weight and limitations on use.

72. (1) The Provincial Government may prescribe conditions for the issue of permits for heavy transport vehicles by the Provincial or Regional Transport Authorities and may prohibit or restrict the use of such vehicles in any area or route within the province :

Provided that any permit issued before the commencement of this Act may be continued or renewed by the competent authority for a period not exceeding three years under the conditions upon which the permit was originally issued, unless the Provincial Government directs otherwise.

(2) Except as may be otherwise prescribed, no person shall drive or cause or allow to be driven in any public place any motor vehicle which is not fitted with pneumatic tyres.

(3) No person shall drive or cause or allow to be driven in any public place any motor vehicle or trailer—

(a) the unladen weight of which exceeds the unladen weight specified in the certificate of registration of the vehicle, or

(b) the laden weight of which exceeds the registered laden weight specified in the certificate of registration, or

(c) any axle weight of which exceeds the maximum axle weight specified for that axle in the certificate of registration.

(4) Where the driver or person in charge of a motor vehicle or trailer driven in contravention of sub-section (2) or clause (a) of sub-section (3) is not the owner, a Court may presume that the offence was committed with the knowledge of or under the orders of the owner of the motor vehicle or trailer.

Notes.

Notes on Clauses.—The object is two-fold. Firstly, to put a stop to gross overloading by specifying a maximum permissible weight and axle weight which is reasonable for vehicles at present in general use. Secondly, a reasonable limit is imposed which will generally apply but can be varied upwards or downwards by Provincial Governments to suit local conditions.

Changes made by the Select Committee.—The Select Committee omitted sub-clause (1) of the Bill which imposed maximum limits on the laden weight and axle weight of motor vehicles, while retaining the prohibition of the driving in public places of vehicles not fitted with pneumatic tyres. The limits of laden weight and axle weight, which the Select Committee increased, respectively from 12,500 and 9,000 pounds to 14,500 and 10,000 will be found included in the definition in

clause (9) of section (2) of a "heavy transport vehicle.". For the prohibition (subject to a power to prescribe otherwise) of the driving of vehicles exceeding these weights, which was contained in sub-clause (1) of the Bill which the Select Committee omitted, it substituted a provision enabling the Provincial Government to prescribe conditions for the issue by Transport Authorities of permits to drive heavy transport vehicles, and to prohibit or restrict their use in the Province, adding a saving clause to cover any such vehicles which are already plying under permits when the Act comes into force.

In sub-section (4) the Select Committee confined the presumption of knowledge to those cases only in which it seems to it equitable to suppose that the driver would have that knowledge.

Power to have vehicle weighed

73. Any person authorised in this behalf by the Provincial Government may, if he has reason to believe that a goods vehicle or trailer is being used in contravention of section 72, require the driver to convey the vehicle to a weighing device, if any, within a distance of one mile from any point on the forward route or within a distance of five miles from the destination of the vehicle for weighment; and if on such weighment the vehicle is found to contravene in any respect the provisions of section 72 regarding weight, he may, by order in writing, direct the driver to convey the vehicle or trailer to the nearest place, to be specified in the notice, where facilities exist for the storage of goods, and not to remove the vehicle or trailer from that place until the laden weight or axle weight has been reduced or the vehicle has otherwise been treated so that it complies with section 72.

Notes

Changes made by the Select Committee :—The first change confines the scope of the section to goods vehicles, the class of vehicle really concerned. The second change provides

against the possibility of a vehicle being diverted from its route and thus unreasonably delayed on its journey.

74. The Provincial Government or any authority authorised in this behalf by the Provincial Government, if satisfied that it is necessary in the interests of public safety or convenience, or because of the nature of any road or bridge, may by notification in the Official Gazette prohibit or restrict, subject to such exceptions and conditions as may be specified in the notification, the driving of motor vehicles or of any specified class of motor vehicles or the use of trailers either generally in a specified area or on a specified road. Power to restrict the use of vehicles

75. (1) The Provincial Government or any authority authorised in this behalf by the Provincial Government may cause or permit traffic signs to be placed or erected in any public place for the purpose of regulating motor vehicle traffic. Power to erect traffic signs

(2) Traffic signs erected under sub-section (1) for any purpose for which provision is made in the Ninth Schedule shall be of the size, colour and type and shall have the meanings set forth in the Ninth Schedule, but the Provincial Government or any authority empowered in this behalf by the Provincial Government may make or authorise the addition to any sign set forth in the said Schedule, of transcriptions of the words, letters or figures thereon in such script as the Provincial Government may think fit, provided that the transcriptions shall be of similar size and colour to the words, letters or figures set forth in the Ninth Schedule.

(3) Except as provided by sub-section (1) no traffic sign shall, after the commencement of this Act, be placed or erected on or

clause (9) of section (2) of a "heavy transport vehicle.". For the prohibition (subject to a power to prescribe otherwise) of the driving of vehicles exceeding these weights, which was contained in sub-clause (1) of the Bill which the Select Committee omitted, it substituted a provision enabling the Provincial Government to prescribe conditions for the issue by Transport Authorities of permits to drive heavy transport vehicles, and to prohibit or restrict their use in the Province, adding a saving clause to cover any such vehicles which are already plying under permits when the Act comes into force

In sub-section (4) the Select Committee confined the presumption of knowledge to those cases only in which it seems to it equitable to suppose that the driver would have that knowledge.

Power to have vehicle weighed.

73. Any person authorised in this behalf by the Provincial Government may, if he has reason to believe that a goods vehicle or trailer is being used in contravention of section 72, require the driver to convey the vehicle to a weighing device, if any, within a distance of one mile from any point on the forward route or within a distance of five miles from the destination of the vehicle for weighment; and if on such weighment the vehicle is found to contravene in any respect the provisions of section 72 regarding weight, he may, by order in writing, direct the driver to convey the vehicle or trailer to the nearest place, to be specified in the notice, where facilities exist for the storage of goods, and not to remove the vehicle or trailer from that place until the laden weight or axle weight has been reduced or the vehicle has otherwise been treated so that it complies with section 72.

Notes.

Changes made by the Select Committee :—The first change confines the scope of the section to goods vehicles, the class of vehicle really concerned. The second change provides

against the possibility of a vehicle being diverted from its route and thus unreasonably delayed on its journey.

74. The Provincial Government or any authority authorised in this behalf by the Provincial Government, if satisfied that it is necessary in the interests of public safety or convenience, or because of the nature of any road or bridge, may by notification in the Official Gazette prohibit or restrict, subject to such exceptions and conditions as may be specified in the notification, the driving of motor vehicles or of any specified class of motor vehicles or the use of trailers either generally in a specified area or on a specified road. Power to restrict the use of vehicles.

75. (1) The Provincial Government or any authority authorised in this behalf by the Provincial Government may cause or permit traffic signs to be placed or erected in any public place for the purpose of regulating motor vehicle traffic. Power to erect traffic signs

(2) Traffic signs erected under sub-section (1) for any purpose for which provision is made in the Ninth Schedule shall be of the size, colour and type and shall have the meanings set forth in the Ninth Schedule, but the Provincial Government or any authority empowered in this behalf by the Provincial Government may make or authorise the addition to any sign set forth in the said Schedule, of transcriptions of the words, letters or figures thereon in such script as the Provincial Government may think fit, provided that the transcriptions shall be of similar size and colour to the words, letters or figures set forth in the Ninth Schedule.

(3) Except as provided by sub-section (1) no traffic sign shall, after the commencement of this Act, be placed or erected on or

table presumption of want of due care and attention against the driver in case of an accident at a road intersection or other dangerous place at which any traffic sign specified in Part B of the Ninth Schedule was erected.

Police officer :—A conviction for disobeying a police signal under Rule 46 of the Bengal Motor Vehicles Rules, 1935, cannot be sustained unless there is evidence to show that the constable, whose signal was disobeyed, was a police officer in *uniform posted or stationed at the crossings or other places* for the regulation of the traffic *Nanda Lal Khan* v. *Emperor* 43 C. W. N. 278. This section, however, does not require the police officer to be in uniform. It is sufficient if he is for the time being engaged in the regulation of traffic in any public place

Signals and signalling devices

79. The driver of a motor vehicle shall on the occasions specified in the Eleventh Schedule make the signals specified therein :

Provided that the signal of an intention to turn to the right or left or to stop may be given by a mechanical or an electrical device of a prescribed nature affixed to the vehicle.

Notes.

Changes made by the Select Committee :—As the Select Committee omitted clause 115 of the Bill which made the driving of a vehicle without due care and attention a separate offence, it deleted the second proviso to this section as a consequential amendment.

Vehicles with left hand control

80. No person shall drive or cause or allow to be driven in any public place any motor vehicle with a left hand steering control unless it is equipped with a mechanical or electrical signalling device of a prescribed nature and in working order.

Notes.

Notes on Clauses :—**Sections 80 to 85.**—These will standardise similar provisions in provincial rules.

81. No person in charge of a motor vehicle shall cause or allow the vehicle or any trailer to remain at rest on any road in such a position or in such a condition or in such circumstances as to cause or to be likely to cause danger, obstruction or undue inconvenience to other users of the road. Leaving vehicle in dangerous position

Notes.

Changes made by the Select Committee :—Sections 81, 82, 83 and 84.—The minor amendments made are self-explanatory.

The Select Committee has provided that the practice penalised by clause 82 of the Bill can be prohibited by a rule made under section 91 and has accordingly omitted the clause.

82. No person driving or in charge of a motor vehicle shall carry any person or permit any person to be carried on the running board or otherwise than within the body of the vehicle. Riding on running board.

83. No person driving a motor vehicle shall allow any person to stand or sit or anything to be placed in such a manner or position as to hamper the driver in his control of the vehicle. Obstruction of driver

84. No person driving or in charge of a motor vehicle shall cause or allow the vehicle to remain stationary in any public place, unless there is in the driver's seat a person duly licensed to drive the vehicle or unless the mechanism has been stopped and a brake or brakes applied or such other measures taken as to ensure that the vehicle cannot accidentally be put in motion in the absence of the driver. Stationary vehicles.

85. No driver of a two wheeled motor cycle shall carry more than one person in addition to himself on the cycle and no such Pillion riding.

person shall be carried otherwise than sitting on a proper seat securely fixed to the cycle behind the driver's seat.

Notes.

Changes made by the Select Committee :—The Select Committee omitted the reference to riding astride. It is unnessary in Indian conditions to require that a pillion passenger shall be seated astride the cycle.

English Law :—See section 16 of the Road Traffic Act, 1930, quoted under sec. 112 of this Act.

Duty to produce licence and certificate of registration.

86. (1) The driver of a motor vehicle in any public place shall, on demand by any public officer in uniform, produce his licence for examination.

(2) The owner of a motor vehicle, or in his absence the driver or other person in charge of the vehicle, shall, on demand by a registering authority or any person authorised in this behalf by the Provincial Government, produce the certificate of registration of the vehicle and, where the vehicle is a transport vehicle, the certificate of fitness referred to in section 38.

(3) If the license or certificates, as the case may be, are not at the time in the possession of the person to whom demand is made, it shall be a sufficient compliance with this section if such person produces the license or certificates within ten days at any police station in British India which he specifies to the police officer or authority making the demand :

Provided that, except to such extent and with such modifications as may be prescribed, the provisions of this sub-section shall not apply to a driver driving as a paid employee, or to the driver of a transport

vehicle or to any person required to produce the certificate of registration or the certificate of fitness of a transport vehicle.

Notes.

Changes made by the Select Committee:—The addition to clause (2) makes a provision regarding the certificate of fitness which was not adequately provided for in the clause as drafted. In clause (3) consequential amendments are made, the necessity for personal appearance is dispensed with, and the period allowed for production of the required documents is extended

The redraft of the proviso to clause (3) expresses more clearly the degree to which the relaxation given by clause (3) may be extended to the drivers who are normally expected to have such documents with them.

Sub-section (1):—It corresponds to section 8 of Act VIII of 1914 and clause (5) of section 4 of the Road Traffic Act, 1930 (20 and 21 Geo 5, c 43) which has been quoted under sec. 3

Scope.—Failure to produce the driving license on demand by a police officer is an offence and not merely non-carrying of it on person *Dhekha Kunbi* v. *Emperor*, 65 I. C 425=23 Cr. L. J. 73=A. I. R. 1922 Nag. 71, *Bahadur Singh* v. *Emperor*., 33 Cr. L. J. 616=138 I C. 400=33 P. L. R 278=A. I. R. 1932 Lah. 363=1932 Cr.C. 492=Ind. Rul. 1932 Lah 470.

This sub-section applies to a driver's license and does not apply to any permit. *Hasan Ahmad* v. *Emperor*, 29 Cr. L. J. 799=111 I. C. 127=A. I. R. 1228 All. 492=50 All 876=26 A. L. J. 1381

A police officer can ask the driver of a motor vehicle for his license in the private grounds of a person, and it is not necessary that the car should be actually being driven on a a public road. *Allu* v. *Emperor*, 27 Cr. L. J. 1072=97 I. C. 48=7 P. L. T. 542=A. I. R. 1926 Pat. 416. This is no longer good law in view of the words "in any public place" in this sub-section.

Driver:—For its definition, *vide* clause (5) of section 2.

Even if a person is not at the exact moment that the police demand the production of the license actually driving or even seated in the car, he may still be a "person driving a motor vehicle." See *Hamilton* v. *Jones*, (1926) 42 T. L. R. 148=160 L. T. JL. 413. But see *Emperor* v. *Sita Ram*, 28 Cr. L. J. 192=101 I. C. 668=25 A. L. J. 574=A. I. R. 1927 All. 479=

49 All. 754 where Ashworth, J., observed "No person is a driver within the meaning of section 8 (Act VIII of 1914) unless driving" and *Emperor* v. *Madan Mohan Nath Raina*, 43 All. 123 = 18 A. L. J. 933 = 58 I. C. 148 = 21 Cr. L. J. 724, where Tudball, J. observed "A driver of the motor vehicle is the person who is actually at the time driving."

On demand :—The words "upon demand" are clear and can have only one meaning, namely, at once, directly the demand is made The object of these words is to enable the police officers to prevent unlicensed persons from driving motor vehicles and that can only be done by giving the police officers power to demand immediate production of the document when they call for it. If a person driving a motor vehicle has not his licence and cannot produce it immediately and if he be allowed to go away it will be open to anybody to evade the Act and at once depart and never be seen any more by the police officer concerned. *Emperor* v *Madan Mohan Nath Raina*, 43 All. 123 = 18 A. L. J. 933 = 58 I. C. 148 = 21 Cr. L. J 724. The word 'demand' connotes something imperative that brooks no delay. If it had been thought necessary to allow some latitude, that would have been expressed by saying "shall within a reasonable time after request by a police officer, etc" In nine cases out of ten, no doubt, an offender will be known or detected if he were allowed time to produce the licence and failed to do so, but there might be successful evasion in the tenth case. If the rule were felt to be unduly stringent it could perhaps be notified by a rule framed under the Act, but the inconvenience seems to be more apparent than real. Most motorists like the obvious precaution of keeping their licences permanently in a pocket of the car or other accessible part for immediate production. Where a driver refused to produce his licence saying that it was kept in the box under the rear seat and that as ladies were in the car he could not ask them to descend at that spot and produced it about a mile further on where the ladies got down, it was held that the driver was to blame for keeping the licence in an inaccessible place, and that he was technically guilty of the offence. *Narasyya* v. *Emperor.*, 37 Cr. L. J. 1012 = 164 I. C. 351 = 1936 Cr. C. 690 = A. I. R. 1936 Nag. 150 = I. L. R. 1936 Nag. 161.

Prosecutions were, however, deprecated for such technical offences in *Allu* v. *Emperor.*; 97 I. C. 48 = 7 P. L. T. 512 = A. I. R. 1926 Pat. 446 = 27 Cr. L. J. 1072 ; *Mahomed Surty* v. *Emperor.*, 76 I. C. 561 = 2 Bur. L. J. 201 = 1 Rang. 600 = A. I. R.

1924 Rang. 63=25 Cr. L. J. 196 and *Narasyya* v. *Emperor*, supra, especially in the absence of previous warning

To remove undue stringency sub-section (3) provides for some relaxation.

Non-production of licence —There is no provision in this section entitling the police officer, where the driver is not able to produce his licence, to require him to give his name and address He can, however, exercise the power given by clause (b) of section 128(2) of this Act in such a case.

87. (1) The driver of a motor vehicle shall cause the vehicle to stop and remain stationary so long as may reasonably be necessary— **Duty of driver to stop in certain cases.**

(a) when required to do so by any police officer in uniform, or

(b) when required to do so by any person in charge of an animal if such person apprehends that the animal is, or being alarmed by the vehicle will become, unmanageable, or

(c) when the vehicle is involved in the occurrence of an accident to a person, animal or vehicle or of damage to any property, whether the driving or management of the vehicle was or was not the cause of the accident or damage,

and he shall give his name and address and the name and address of the owner of the vehicle to any person affected by any such accident or damage who demands it provided such person also furnishes his name and address.

(2) The driver of a motor vehicle shall, on demand by a person giving his own name and address and alleging that the driver has committed an offence punishable under sec-

tion 116, give his name and address to that person.

(3) In this section the expression "animal" means any horse, cattle, elephant, camel, ass, mule, sheep or goat.

Notes.

Notes on Clauses :—This reproduces the existing section 4 of the Indian Motor Vehicles Act, 1914, with the additional definition of "animal"

Changes made by the Select Committee :—Sub-section (1). —The change in clause (b) is designed to secure that the mere alarm of an animal will not justify the person in charge in stopping the driver of a vehicle

Sub-section (2) —The redraft makes it clear that the allegation regarding commission of an offence must be one made at the time by the person demanding the driver's name, and that such person must himself be ready to supply his own name and address

Sub-section (3).—The Select Committee considered it advisable to exclude dogs from the denotation of animal, particularly in view of clause (c) of sub-section (1).

Clause (b) —It is an essential feature of the section imposing liability on drivers to respond to signals that it is not for them to speculate as to the reason why the signal was given and to act accordingly. It is the person giving a signal who alone knows and he must be the sole judge of the necessity of giving the signal Only on such a construction can any reasonable *measure of safety be attained. In the event* of a signal to slow down which must be obeyed when the person to whom the signal is given is made aware of it, that there is danger, the driver must slow down to such an extent as to be able to stop practically instantaneously should the necessity arise Where, therefore, there was a lorry stationary *by the roadside behind which were people engaged in loading* hounds, some of whom were nervous and some were already in the lorry and some were in the process of being put in and signals were made to the driver of a motor car to slow down and he disregarded these signals and went past the lorry at a rate which must have been considerable seeing that he could not pull up in less than 15 yards and then only with such

violent application of the brakes as to result in a skid, he was guilty of having contravened the provision of sec. 4 (b) of Act VIII of 1914. *W. C Dutta* v. *Emperor.*, 34 Cr. L.J. 1260 = 146 I. C. 208 = A I.R. 1933 Nag. 177 = 1933 Cr C. 690.

Clause (c) :—Where there was nothing to show that the driver knew and had reason to believe that a person was hurt and he did not stop the motor vehicle, he could not be convicted under sec. 16 read with sec 4 (c) of Act VIII of 1914 *Muhammad Rafiq* v. *Emp*, 39 Cr. L J. 382 = 173 I. C. 860, 10 R P. 451, 4 B R. 351, A. I. R. 1938 Pat 268.

English Law :—Section 20 of the Road Traffic Act, 1930, which corresponds partly to this section, runs as follows .—

20.—(1) If the driver of a motor vehicle who is alleged to have committed an offence under the foregoing provisions of this Act as to reckless or dangerous driving or careless driving refuses, on being so required by any person having reasonable ground for so requiring, to give his name or address, or gives a false name or address, he shall be guilty of an offence

Duty to give name and address and to stop and power of arrest in certain cases

(2) Any police constable may arrest without warrant the driver of any motor vehicle who within his view commits any offence under the provisions of this Act as to reckless or dangerous driving or careless driving, unless the driver either gives his name and address or produces his license for examination.

(3) Any person driving a motor vehicle on a road shall stop the vehicle on being so required by a police constable in uniform, and if he fails to do so shall be liable to a fine not exceeding five pounds.

Duty of the Public.

If a Police man holds up his hands the whole traffic in the vicinity will stop. The public may be well advised to rightly obey as far as possible, Police Traffic signal. If they do so less will be heard of incapacity of the Police men to regulate traffic.

In the case of *Ramanujam Naidu* v. *Emperor*, A I. R. 1930 Mad. 415 = 31 Cr. L J. 639 = 124 I C. 206 = 57 M. L. J. 457 = 30 M.L.W. 468 = 1929 M.W.N. 596, certain proceedings under the Motor Vehicles Act were instituted against Ramanujam Naidu on a report by a Head Constable to the Sub-Inspector of Kumbakonam. In the charge framed against him it was alleged that he drove a bus in Kaluthai Tope Road, Kumba-

konam and instead of stopping his bus on seeing another bus which came in the opposite direction and without caring for the regulation under which the Circle Inspector asked him to stop, drove very fast. There are two separate actions imputed in this charge, the first being that the accused failed to stop his bus on seeing another bus. The Rule is that when two motor buses are about to pass each other, it is the duty of one of them to stop presumably in the interest of safety. It was admitted by the prosecution that it was the duty of the other bus to stop the vehicle and accordingly the petitioner was not found guilty of failing to observe this Rule. There remains the charge that he failed to stop when the Circle Inspector asked him to do so It had been contended on behalf of the petitioner that, under section 4 of the Motor Vehicles Act a driver can only be stopped by a Police Officer who is engaged in regulating the traffic This is so clearly against the language of the section as not to merit further discussion. Part (a) of the section requires that a driver should stop in three sets of circumstances, firstly, that traffic may be regulated, secondly, that the name and address may be obtained with a view to a prosecution, and thirdly, for the purpose of enforcing any of the provisions of the Act The allegations by the prosecution is that the bus was overloaded and that the Inspector wished to inspect it and to check the license. These were reasons for stopping it. There remains the question of the fact whether, before the petitioner's bus passed the bus in which the Inspector was seated, he made a sign to the petitioner to stop which the petitioner saw and disregarded. In ordinary circumstances his evidence ought to have been accepted. The report of the Head Constable, which certainly ought to contain the elements of the offence charged is that the petitioner's bus ought to have stopped when passing the other bus and that it not only failed to do so but did not stop in spite of the order of the Circle Inspector. The Circle Inspector signalled the petitioner to stop before the passing took place.

The Head Constable says: *Bus* driven by the accused passed and it was not stopped even when I and the Inspector asked him to do so. In Chief Examination the Inspector says that it did not stop when it passed his bus and it was only elicited from him in cross-examination that hands were up to stop the bus. The driver and the conductor of the other bus were examined as defence witnesses and one was unable to state whether before the accused passed the other bus the

Inspector raised his hands, whereas the other denied that such an action took place. There is no doubt that, after the petitioner had driven his bus by, the Police officer called out to him to stop and he eventually stopped. But in as much as the conviction is based on the finding that the petitioner received and disregarded the signal to stop before passing the other bus one is unable to agree that the evidence supports it. The petition was allowed Conviction and sentence were set aside.

Under section 87 of this Act any police officer in uniform may require the driver of a motor vehicle to stop and remain stationary.

Duty of owner of motor vehicle to give information.

88. The owner of a motor vehicle the driver of which is accused of any offence under this Act shall, on the demand of any police officer authorised in this behalf by the Provincial Government, give all information regarding the name and address of and the licence held by the driver which is in his possession or could by reasonable diligence be ascertained by him.

Notes

Notes on Clauses —This already appears in substance in provincial rules

Owner —For its definition, see sec. 2, cl. (19) of this Act.

Information —The extent to which information can be demanded is as to the name and address of and the license held by the driver. The owner cannot be compelled to give any other information, including the information as to the alleged offence itself.

English Law —See section 113, sub-section (3) of the Road Traffic Act, 1930, quoted under sec. 112 of this Act.

Duty of driver in case of accident and injury to a person.

89. When any person is injured as the result of an accident in which a motor vehicle is involved, the driver of the vehicle or other person in charge of the vehicle shall—

(a) take all reasonable steps to secure

medical attention for the injured person, and, if necessary, convey him to the nearest hospital, unless the injured person or his guardian, in case he is a minor, desires otherwise ;

(b) give on demand by a police officer any information required by him, or if no police officer is present, report the circumstances of the occurrence at the nearest police station as soon as possible, and in any case within twenty hours of the occurrence.

Notes.

Notes on Clauses .—This is very necessary and it is proposed that the penalty for its breach should include disqualification—Vide section 17 (4).

Changes made by the Select Committee :—The Select Committee omitted the opening words of clause (a) because there might be no police officer present and the injured person might be unconscious It also provided that an injured person shall not be taken to hospital against his will.

Changes made by the Legislative Assembly :—In the course of the debates in the Legislative Assembly the words "or his guardian, in case he is a minor" were added so that his guardian in case the injured person is a minor should also have the opportunity of expressing his intention.

Scope of the Section :—This section applies to a case in which a motor vehicle is involved in an accident as a result of which any person is injured. The driver of a motor vehicle or the person in charge of the vehicle, which is involved in the accident, need not perform the duties imposed under this section if no person was injured as a result of the accident. See *In re Nagaraja Mooppanar*, 29 Cr. L J. 461 = 108 I. C. 909 = 27 M.L.W. 425 = A.I.R. 1928 Mad. 364 = 51 Mad. 504 = 55 M. L. J 320 in this connection.

Person in charge of the vehicle .—In the case of *Emperor v. Ranamjai Singh*, 29 Cr L. J. 357 = 108 I. C. 230 = 26 A.L.J. 331 = A.I.R. 1928 All. 261, the facts were that a car in which the

accused was sitting, driven by a servant of his, knocked down and killed a boy between Pratapgarh and Allahabad, and that in spite of the serious accident of this kind the gentleman allowed his driver to proceed in a most inhuman way and endeavoured to cover up his tracks and conceal the identity of his car. The answer to this very serious allegation is that he was not there at all, that he did not hear of the accident until a long time afterwards and that he pleaded guilty through a pleader without knowing what offence he was pleading guilty to The driver was identified and tried and convicted for the offence of causing death of the boy by reckless driving. His Lordship Mr. Justice Walsh says in course of his judgment that it becomes necessary, first to refer to the Motor Vehicle Act, section 16, a penalty clause that prescribes the penalty which may be inflicted upon anybody who contravenes any of the provisions of the law or any rule made under the Act The sooner the authorities abandon the practice of prosecuting the motorist or indeed any other people, under sections which do not prescribe an offence at all, the better So far as the facts of this case are concerned one possible section which is appropriate is section 4 Section 4 prescribes that when the person in charge of a motor vehicle knows, or has reason to believe, that an accident has occurred, shall cause the vehicle to stop and shall also, if required give his name and address and the name and address of the owner of the motor vehicle If Kunwar Ranamjai Saheb was in the car at the time of the accident, that section would apply to him. The language of the section has been carefully chosen. It has occurred, and it may frequently occur that a driver who has caused an accident either by excessive speed or by a bonafide mishap, and refuses to stop, may plead, and rightly plead, that he was acting under the orders of either the owner or the gentleman in charge of the car This owner may be sitting behind giving direct orders to his driver as to the space at which he is to travel and he may, in spite of a serious accident, command the driver to pursue his way. Similarly, the owner may be absent, and a person may be in charge of the car with the consent of the owner, such as a member of the household or a guest who has an important journey to perform and is permitted by the owner to take charge of the car and the driver. In such cases it is clear that the person in charge of the car, to whose orders the driver is in fact submitting at the time of the accident or immediately thereafter, is amenable to the section.

Accident.

Road Traffic Act, 1930.

(20 and 21 Geo. 5, c. 43)

Section 22 runs as follows :—

Duty to stop in case of accident.

22.—(1) If in any case owing to the presence of a motor vehicle on a road an accident occurred whereby damage or injury is caused to any person, vehicle or animal, the driver of the motor vehicle shall stop and if required so to do by any person having reasonable grounds for so requiring, give his name and address, and also the name and address of the owner and the identification marks of the vehicle.

(2) If in case of any such accident as aforesaid the driver of the motor vehicle for any reason does not give his name and address to any such person as aforesaid, he shall report the accident at a police station or a police constable as soon as reasonably practicable, and in any case within twenty-four hours of the occurrence thereof.

(3) In this section, the expression "Animal" means any horse, cattle, ass, mule, sheep, pig, goat or dog.

(4) If any person fails to comply with this section he shall be guilty of an offence.

Section 23 of the same Act provides as follows :—

Inquries into accidents.

23.—(1) Where an accident arises out of the presence of a motor vehicle on a road, the Minister may direct inquiry to be made into the cause of the accident.

(2) Where any such accident has occurred any person authorised by the Minister in that behalf may on production if so required by this authority, inspect any vehicle in connection with which the accident arose, and for that purpose may enter at any reasonable time any premises where the vehicle is, and if any person obstructs any person so authorised in the performance of his duties under this sub-section, he shall be guilty of an offence.

(3) If in any case the Minister considers that any enquiry to be made by him under this section should be made by means of the holding of a public enquiry, he may direct a public enquiry to be held.

(4) Any report made by or to the minister as the result of an enquiry under this section shall not be used in evidence by or on behalf of any person by or against whom any legal pro-

ceedings are instituted in consequence of the accident to which the enquiry relates.

In the case of *Phillips* v. *Britannia Laundry*, (1923) 3 K.B., at p. 841, it was held that when an Act imposes the duty of commission or an omission the question whether a person aggrieved by breach of the duty has a right of action depends on the intention of the Act Was it intended to meet the duty which was owed to the party aggrieved as well as to the State, or was it a public duty only? That depends on the construction of the Act and the circumstances in which it was made and to which it relates. One question to be considered is, does the Act contain reference to a remedy for breach of it? Prima facie, if it does, that is the only remedy. But that is not conclusive The intention as disclosed by its scope and wording must still be regarded, and it may still be that though the statute creates a duty and provides a penalty the duty it nevertheless owes to individuals The question is not to be solved by considering whether or not the person aggrieved can bring himself within some special class of things.

The duty may be of such paramount importance that it owes to all the public. It would be strange if a less important duty, which is owed to a section of the public may be enforced by an action while a more important duty owed to the public at large cannot The right of action does not depend on whether a statutory commandment or prohibition is pronounced for the benefit of public or for the benefit of a class. It may be conferred on any one who can bring himself within the benefit of the Act, including one who cannot be otherwise specified by a person using the highway

In the case of *Hanbrook* v. *Stokes*, (1925) 1. K B., at page 156, it was held that the duty of the owner of a motor car in a highway is not a duty to refrain from inflicting a particular kind of injury upon those who are in the highway. If so he would be an insurer It is a duty to use reasonable care to avoid injury to those using the highway.

There may be an inevitable accident. An inevitable accident is that which the party charged with the damage could not possibly prevent by the exercise of ordinary care, caution and skill · Vide the case of *The Marpesia*, L. R. 4 P. C. 212.

If there is no one injured, should it be reported ?

In the case of *Mansa Singh* v. *Emperor*, A. I. R. 1929 All. 750 = 30 Cr. L. J. 1085 = 119 I. C. 570 = 1929 A. L. J. 1041 = 51 All. 996 = Ind Rul. 1929 All. 1066, the only question for decision was the proper construction to be put on rule 32 of the rules framed by the U. P. Government under the Motor Vehicles Act of 1914 The rule runs as follows :

On the occurrence of any accident the driver or the person in charge of any motor vehicle concerned in the accident should render to such person all such assistance as may be reasonably necessary, and shall, if there is no police officer present report the accident without delay at the nearest police station.

There are two possible constructions of this rule, neither of which would offend against the rule of construction or of grammar. The first is that the words "if any person is injured" governs the whole of the rest of the clause. The other construction possible is that on the occurrence of any accident, if there is no police officer present, the driver or person in charge of the motor vehicle shall report the accident without delay at the nearest police station The first construction is the correct one. The words "if any person is injured" governs the whole of the clause. The second construction upon the clause is a possible one but where there are two possible constructions, it is the duty of the Court to use the common sense construction. The rule referred to was made in order to provide for cases where people are injured, and that the other construction would put an impossible burden upon the motorist public and incidentally have the effect of putting upon the Court sometime or other the duty of defining or limiting the use of the word "Accident". Otherwise, if the second construction is placed upon this rule, any motorist or any person in charge of a motor vehicle would be under the danger of fine if he did not report to the police any one of the hundred various things of no importance which might happen to him, but which might very well be defined as an accident. The conviction and sentence were set aside.

Accident—The result of accidents is some injury, or annoyance, or danger to the public, or danger or injury to the public property or obstruction to the traffic. All persons paralytic as well as others, have a right to walk on the road and are entitled to the exercise of the reasonable care on the part

of the person driving carriages upon it Vide *Boss* v. *Litton*, (1832), 5 Car. & P. 407, 409.

Under sub section (c) a person driving a motor car is obliged to stop if an accident occurs to a person on foot, on horse back or on a vehicle or to a horse or to a vehicle in charge of a person owing to the presence of a motor car on the road and must be required to give the name and address of the owner of the car and its number. But if the drivers do not know that an accident has occurred, they will be protected: *Sherras* v. *De Rutzen*, (1895) 1. Q B. 918.

In the case of *Nagaraja Mooppanar, petitioner* v. *Emperor, Opp. party*, A. I. R. 1928 Mad 364 = 29 Cr. L. J. 461 = 108 I C. 909 = 27 M. L. W. 425 = 51 Mad 504 = 55 M L. J. 320, the driver was convicted for failing to comply with Rule XXVII C, Motor Vehicles Rules, of the Madras Presidency. The rule in question runs as follows .—"The driver of the motor vehicle shall promptly report occurrence of accidents to the nearest Police Station" The facts are briefly these . "On the evening of the 3rd June 1925 the petitioner was running from Kumbakonam in his own car, with some friends to his home at Keisthalam. When he reached Ramanuzapuram bathing ghat on his way, the car went out of control and jumped over a culvert, the parapet of which was nine inches high and fell into channel As a result of the accident, the front axle of the car was bent and some Chunam was knocked off on the eastern side of the culvert. Those who were in the car received slight injury but they were able to return to their home in the same car For the next two days, the petitioners stayed at home, presumably to get over the shock of the accident On the morning of the sixth June the Sub-Inspector of Police hearing of the accident called at the petitioner's house and recorded a statement from him.

It was held by Mr. Justice Reilly, that an accident which makes the control of the vehicle impossible in the usual way is more difficult than usual and may be source of danger to other usual things and the rule requiring the drivers to report such an accident would be within the rule-making power under the Act But it was held that there is no evidence by this accident that any one was really injured or annoyed or that it obstructed traffic or destroyed property The incident therefore was not an accident within the meaning of the rule

Clause (a):—After the accident the accused left another

mounting of a motor vehicle in motion ;

(h) prohibiting the use of foot-paths or pavements by motor vehicles ;

(i) generally, the prevention of danger, injury or annoyance to the public or any person, or of danger or injury to property or of obstruction to traffic ; and

(j) any other matter which is to be or may be prescribed.

Notes.

Changes made by the Select Committee:—Sub-section (2):— The Select Committee has redrafted clause (c) [now clause (d)] without altering the substance and has added "stands" for which partial provision is made in section 68 to parking-places in clause (d) [now (e)] It has also added two specific rule-making powers, and a general rule-making power in clause (i) which is reproduced from the 1914 Act

CHAPTER VII.

Motor Vehicles Temporarily Leaving or Visiting British India.

Power of Central Government to make rules.

92. (1) The *Central Government* may, by notification in the Official Gazette, make rules for all or any of the following purposes, namely :—

(a) the grant and authentication of travelling passes, certificates or authorisations to persons temporarily taking motor vehicles out of British India to any place outside India or to persons temporarily proceeding out of British India to any place outside India and desiring to drive a motor vehicle during their absence from British India ;

(b) prescribing the conditions subject to which motor vehicles brought temporarily into British India from outside India by persons intending to make a temporary stay in British India may be possessed and used in British India ; and

(c) prescribing the conditions to which persons entering British India from any place outside India for a temporary stay in British India may drive motor vehicles in British India.

(2) No rule made under this section shall operate to confer on any person any immunity in any province from the payment of

any tax levied in that province on motor vehicles or their users.

(3) Rules made under clauses (b) and (c) of sub-section (1) shall, in case of motor vehicles and persons entering British India from the French and Portuguese Settlements bounded by India, be applicable only to motor traffic to which the International Convention relating to motor traffic concluded at Paris on the 24th day of April, 1926, applies.

(4) Nothing in this Act or in any rule made thereunder by a Provincial Government relating to—

(a) the registration and identification of motor vehicles, or

(b) the requirements as to construction, maintenance and equipment of motor vehicles, or

(c) the licensing and qualifications of drivers of motor vehicles

shall apply to any motor vehicle to which or to any driver of a motor vehicle to whom any rules made under clause (b) or clause (c) of sub-section (1) apply.

Notes.

Notes on Clauses :—Under this, rules can be made not only to deal with vehicles, covered by an International Convention but also those coming from and going to countries which are not signatories to any convention.

Changes made by the Select Committee :—The change made is formal only.

Old law :—*This section corresponds to sections 14 and 15* of Act VIII of 1914.

CHAPTE VIII

Insurance of Motor Vehicles Against Third Party Risks.

Notes.

Notes on Clauses :—General—The provisions relating to compulsory insurance in respect of third party risks follow closely the recommendations of the Motor Vehicles Insurance Committee and are almost wholly adapted from the English law.

Commencement :—The Chapter shall not have effect until the 1st day of July, 1943. Vide Sec. 1, cl. (3) of this Act

Object —Accidents have been of frequent occurrence in India In a large number of cases injured persons or the dependants of persons killed found it difficult to realise damages or compensation from the owner or driver of a motor vehicle who had no means to satisfy their claims. Necessity for insurance against third party risk has, therefore, been keenly felt and a provision for compulsory insurance has been made in this Chapter. The Legislatures have imposed duties on insurers to satisfy judgments against persons insured in respect of third party risks and made provisions for preventing the insurers evading liability under the policy except on certain specified grounds.

93. In this Chapter— Definitions

(a) "authorised insurer" means an insurer in whose case the requirements of the Insurance Act, 1938, with respect to the registration of and deposits by insurers are complied with, and IV of 1938.

(b) "certificate of insurance" means a certificate issued by an authorised insurer in pursuance of sub-section (4) of section 95 ; and includes

where more than one certificate has been issued in connection with a policy, or where a copy of a certificate has been issued, all those certificates or that copy, as the case may be.

Notes.

Authorised Insurers :—Under section 36 (3) of the Road Traffic Act, 1930 (20 & 21 Geo. 5, c. 43) the expression "authorised insurer" means an assurance company or an underwriter in whose case the requirements of the Assurance Companies Act, 1909 (9 Edw 7. c. 49), *as amended by that Act*, (i.e., the Road Traffic Act, 1930), with respect to deposits by assurance companies and deposits and guarantees by underwriters are complied with.

Registration

Registration :—Section 3 of the Insurance Act, 1938 (IV of 1938), which provides for registration, runs as follows :—

3. (1) No insurer shall, after the commencement of this Act, begin to carry on any class of insurance business in British India, and no insurer carrying on any class of insurance business in British India shall, after the expiry of three months from the commencement of this Act, continue to carry on any such business, unless he has obtained from the Superintendent of Insurance a certificate of registration.

(2) Every application for registration shall be accompanied by—

(a) a certified copy of the memorandum and articles of association, where the applicant is a company and incorporated under the Indian Companies Act, 7 of 1913; or, in the case of any other insurer specified in sub-clause (a) (ii) or sub-clause (b) of clause (9) of section 2, a certified copy of the deed of partnership or of the deed of constitution of the company, as the case may be, or, in the case of an insurer having his principal place of business or domicile outside British India, the document specified in clause (a) of section 63;

(b) the name, address and the occupation, if any, of the directors where the insurer is a company incorporated under the Indian Companies Act, 7 of 1913, and in the case of an insurer specified in sub-clause (a) (ii) of clause (9) of section 2 the names and addresses of the proprietors and of the manager in British India, and in any other case the full address of the principal office of the insurer in British India and the names of the directors and the manager at such office and the name and address of some one or more persons resident in British India authorised to accept any notice required to be served on the insurer ;

(c) a statement of the class or classes of insurance business done or to be done, and a statement that the amount required to be deposited by section 7 or section 98 before application for registration is made has been deposited together with a certificate from the Reserve Bank of India showing the amount deposited ,

(d) where the provisions of section 6 or section 97 apply, a declaration verified by an affidavit made by the the principal officer of the insurer authorized in that behalf that the provisions of those sections as to working capital have been complied with ;

(e) in the case of an insurer having his principal place of business or domicile outside British India, a statement verified by an affidavit made by the principal officer of the insurer setting forth the requirements (if any) not applicable to nationals of the country in which such insurer is constituted, incorporated or domiciled which are imposed by the laws or practice of that country upon Indian nationals as a condition of carrying on insurance business in that country ,

(f) a certified copy of the published prospectus, if any, and of the standard policy forms of the insurer and statements of the assured rates, advantages, terms and conditions to be offered in connection with insurance policies together with a certificate in connection with life insurance business by an actuary that

where more than one certificate has been issued in connection with a policy, or where a copy of a certificate has been issued, all those certificates or that copy, as the case may be.

Notes.

Authorised Insurers.—*Under section 36 (3) of the* Road Traffic Act, 1930 (20 & 21 Geo. 5, c. 43) the expression "authorised insurer" means an assurance company or an underwriter in whose case the requirements of the Assurance Companies *Act*, 1909 *(9 Edw. 7. c. 49), as amended by that Act*, (i.e., the Road Traffic Act, 1930), with respect to deposits by assurance companies and deposits and guarantees by underwriters are complied with.

Registration

Registration :—Section 3 of the Insurance Act, *1938* (IV of 1938), which provides for registration, runs as follows :—

3. (1) No insurer shall, after the commencement of this Act, begin to carry on any class of insurance business in British India, and no insurer carrying on any class of insurance business in British India shall, after the expiry of three months from the commencement of this Act, continue to carry on any such business, unless he has obtained *from the Superintendent of Insurance a certificate of registration*

(2) Every application for registration shall be accompanied by—

(a) a certified copy of the memorandum and articles of association, where the applicant is a company and incorporated under the Indian Companies Act, 7 of 1913 ; or, in the case of any other insurer specified in sub-clause (a) (ii) or sub-clause (b) of clause (9) of section 2, a certified copy of the deed of partnership or of the deed of constitution of the company, as the case may be, or, in the case of an insurer having his principal place of business or domicile outside British India, the document specified in clause (a) of section 63 ;

(b) the name, address and the occupation, if any, of the directors where the insurer is a company incorporated under the Indian Companies Act, 7 of 1913, and in the case of an insurer specified in sub-clause (a) (ii) of clause (9) of section 2 the names and addresses of the proprietors and of the manager in British India, and in any other case the full address of the principal office of the insurer in British India and the names of the directors and the manager at such office and the name and address of some one or more persons resident in British India authorised to accept any notice required to be served on the insurer ;

(c) a statement of the class or classes of insurance business done or to be done, and a statement that the amount required to be deposited by section 7 or section 98 before application for registration is made has been deposited together with a certificate from the Reserve Bank of India showing the amount deposited ,

(d) where the provisions of section 6 or section 97 apply, a declaration verified by an affidavit made by the the principal officer of the insurer authorized in that behalf that the provisions of those sections as to working capital have been complied with ;

(e) in the case of an insurer having his principal place of business or domicile outside British India, a statement verified by an affidavit made by the principal officer of the insurer setting forth the requirements (if any) not applicable to nationals of the country in which such insurer is constituted, incorporated or domiciled which are imposed by the laws or practice of that country upon Indian nationals as a condition of carrying on insurance business in that country ,

(f) a certified copy of the published prospectus, if any, and of the standard policy forms of the insurer and statements of the assured rates, advantages, terms and conditions to be offered in connection with insurance policies together with a certificate in connection with life insurance business by an actuary that

such rates, advantages, terms and conditions are workable and sound :

Provided that in the case of marine, accident and miscellaneous insurance business other than workmen's compensation and motor car insurance, the above requirements regarding prospectus, forms and statements shall be complied with only in so far as the prostectus, forms and statements may be available; and

(g) the prescribed fee for registration being not more than one hundred rupees for each class of business.

(3) In the case of any insurer having his principal place of business or domicile outside British India, the Superintendent of Insurance shall withhold registration or shall cancel a registration already made, if he is satisfied that in the country in which such insurer has his principal place of business or domicile Indian nationals are debarred by the law or practice of the country relating to, or applied to, insurance from carrying on the business of insurance, or that any requirement imposed of such insurer under the provisions of section 62 is not satisfied.

(4) In the case of any insurer the Superintendent of Insurance shall cancel a registration already made if the insurer fails to comply with the provision of section 7 or section 98 as to deposits.

(5) *When the Superintendent of Insurance withholds or* cancels any registration under sub-section (3) or sub-section (4) he shall give notice in writing to the insurer of his decision, and the decision shall take effect on such date as he may specify in that behalf in the notice, such date not being less than one month nor more than two months from the date of the receipt of the notice in the ordinary course of transmission.

(6) The Superintendent of Insurance shall, on being satisfied that the applicant has fulfilled all the requirements of the Act applicable to him, grant the insurer a certificate of registration.

Deposits :—The provision for deposits has been made in section 7 of the Insurance Act, 1938 (IV of 1938) which, as

amended by the Insurance (Amendment) Act, 1939, (Act XI of 1939), runs as follows :—

7 (1) Every insurer not being an insurer specified in sub-clause (c) of clause (9) of s. 2 shall, in respect of the insurance business carried on by him in British India, deposit and keep deposited with the Reserve Bank of India in one of the offices in India of the Bank for and on behalf of the Central Government cash or approved securities, estimated at the market value of the securities on the day of deposit, of the amount hereafter specified, namely : Deposits.

(a) where the business done or to be done is life insurance only, two hundred thousand rupees ;

(b) where the business done or to be done is fire insurance only, one hundred and fifty thousand rupees ,

(c) where the business done or to be done is marine insurance only, one hundred and fifty thousand rupees ,

(d) where the business done or to be done is accident and miscellaneous insurance including workmen's compensation, and motor car insurance, one hundred and fifty thousand rupees ,

(e) where the business done or to be done includes life insurance and anyone of the three classes specified in clauses (b), (c) and (d), three hundred thousand rupees of which two hundred thousand rupees shall be the deposit for life insurance business ,

(f) where the business done or to be done includes life insurance and any two of the three classes specified in classes (b) (c) and (d), four hundred thousand rupees of which two hundred thousand rupees shall be the deposit for life insurance business ,

(g) where the business done or to be done includes life insurance and all three classes specified in classes (b), (c) and (d), four hundred and fifty thousand rupees of which two hnndred thousand rupees shall be the deposit for life insurance business ;

(h) where the business done or to be done does not include life insurance but includes all three classes

specified in clauses (b), (c) and (d), two hundred and fifty thousand rupees ;

(i) where the business done or to be done does not include life insurance but includes all three classes specified in classes (b), (c) and (d), three hundred and fifty thousand rupees ; and

(j) where the business done or to be done is marine insurance relating to country craft or its cargo and no other type of marine insurance, ten thousand rupees only.

(2) Where the insurer is an insurer specified in sub-clause (c) of clause (9) of section 2, he shall be deemed to have complied with the provisions of this section as to deposits, if in respect of any class of insurance business carried on by him in British India under a standing contract of the nature referred to in sub-clause (c) of clause (9) of section 2, a deposit of an amount one-and-a-half times that specified in sub-section (1) as the deposit for that class of insurance business has been made in Reserve Bank of India in one of the offices in India of the Bank for and on behalf of the Central Government in cash or approved securities estimated at the market value of securities on the day of deposit by or on behalf of the under-writers who are members of the Society of Llyods with whom he has his standing contract.

(3) Where the deposit is to be made by an insurer incorporated before, or carrying on the business of insurance in British India before the 27th day of January, 1937, the deposit referred to in sub-section (1) may be made in not more than seven instalments, of which the first shall be not less than one-fourth of the total amount of the deposit and shall be paid before the application for registration is made, the second shall be not less than one-sixth of the balance of the deposit and shall be paid before the expiry of four months from the commencement of this Act and the subsequent instalments shall be of not less than the minimum amount required as the second instalment and shall be paid before the 1st day of January of each succeeding year :

Provided that in the case of insurers carrying on life insurance business only, the deposit may be made in not more than ten instalments, of which the first shall be not less than one-fourth of the total amount of the deposit, and shall be

paid before the application for registration is made, the second shall be not less than one-ninth of the balance of the deposit, and shall be paid before the expiry of four months from the commencement of this Act, and the subsequent instalments shall be of not less than the minimum amount required as the second instalment, and shall be paid before the 1st day of January of each succeeding year.

(4) Notwithstanding anything contained in sub-section (3), in the case of an insurer to whom that sub-section applies not being an insurer specified in sub-clause (a) (ii) or sub-clause (b) of clause 9 of section 2, and not being an insurer incorporated in or domiciled in the United Kingdom, the deposit referred to in sub-section (1) shall be made in two instalments of which the first shall be of not less than one-half of the total amount of the deposit and shall be made before the application for registration is made, and the second shall be made before the expiry of one year from the date of registration

(5) Where the deposit is to be made by an insurer neither incorporated before, nor carrying on insurance business in British India before, the 27th day of January, 1937, the deposit may be made in instalments of not less than one fourth of the total amount before the application for registration is made, not less than one-third the balance before the expiry of one year from the commencement of the business in British India, and the balance before the expiry of three years from the commencement of business in British India :

Provided that in the case of any insurer not being an insurer specified in sub-clause (a) (ii) or sub-clause (b) of clause (9) of section 2, and not being an insurer incorporated in or domiciled in the United Kingdom, the deposit shall be made in full before the application for registration is made.

(6) No class of insurance business in addition to the class or classes in respect of which an insurer is already liable to make a deposit under sub-section (1) or sub-section (2) shall be undertaken by the insurer until the deposit to which he is already liable has been made in full, and the additional deposit required in respect of the additional class of business or so much thereof as under the provisions of sub-sections (3), (4) or (5) is to be made before the application for registration, has also been made in full

(7) Securities already deposited with the Controller of Currency in compliance with the Indian Life Assurance Companies Act, 6 of 1912, shall be transferred by him to the Reserve Bank of India and shall, to the extent of their market value on the day of the first deposit made in compliance with this Act, be deemed to be deposited under this Act in respect of the life insurance business of the insurer.

(8) A deposit made in cash shall be held by the Reserve Bank of India to the credit of the insurer and shall be returnable to the insurer in cash in any case in which under the provisions of this Act a deposit is to be returned; and any interest accruing due and collected on securities deposited under sub-section (1) or sub-section (2) shall be paid to the insurer, subject only to deduction of the normal commission chargeable for the realization of interest

(9) The insurer may at any time substitute for securities lodged with the Bank under this section other approved securities of equal value at the market rate prevailing at the time of substitution, and the Reserve Bank of India shall, if so requested by a depositor, invest in approved securities the whole or any part of a deposit made originally in cash of the whole or any part of cash received by the Bank on sale of or on the maturing of securities lodged by the depositor

(10) If any part of a deposit made under this section is used in the discharge of any liability of the insurer, the insurer shall deposit such additional sum in cash or approved securities as will make up the amount so used. The insurer shall be deemed to have failed to comply with the requirements of sub-section (1), unless the deficiency supplied within a period of two months from the date when the deposit or any part thereof is so used for discharge of liabilities.

Necessity for insurance against third party risk

94. (1) No person shall use except as a passenger or cause or allow any other person to use a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this Chapter.

Explanation.—A person driving a motor vehicle merely as a paid employee, while there is in force in relation to the use of the vehicle no such policy as is required by this sub-section, shall not be deemed to act in contravention of the sub-section unless he knows or has reason to believe that there is no such policy in force.

(2) This section shall not apply to any vehicle owned by or on behalf of the Central Government or a Provincial Government or a local authority notified in this behalf by the Provincial Government, or a State-owned railway, at any time when the vehicle is driven by a servant of the owner in the course of his employment, or is otherwise subject to the control of the owner.

Changes made by the Select Committee.—Sub-clause (1)— The change made in the first line (i.e., "No owner of a motor vehicle" in place of "No person") confines liabilities for a contravention of the clause to the owner of the vehicles, who is the person in possession of knowledge whether the vehicle is or is not insured

Sub-clause (2)—The Select Committee has removed the proviso for the making of deposits instead of insuring. It saw little prospect of such a provision being extensively utilised, and none but wealthy corporations could avail themselves of it. It has added local authorities to the bodies exempted under the sub-clause, as these are accorded exemption in the English Act. It has also added State-owned railways in the view that their financial position makes it unnecessary for them to issue against third party risks.

Changes made by the Legislatures—In clause (1) the Legislative Assembly substituted the words "No person" in place of "No owner of a motor vehicle," and introduced the words "except as a passenger" after the words "shall use" and "any other person" and added the explanation.

The Council of State omitted the words "except as a passenger" after the words "any other person."

Person :—The word includes bodies such as companies, however incorporated.

Motor vehicle :—For the definition, see sec. 2, clause (18). All mechanically propelled vehicles comprised in several classes in that section come within the scope of this section, subject to the exceptions specified in sub-section (2) of this section.

Public place :—For the definition, see sec. 2, clause (24) of this Act.

In force :—The policy may not have come into operation; it may, through the inability of the insurers legally to issue it, or through the failure of its subject-matter, or through expiry, be void altogether; it may through fraud, innocent misrepresentation or breach of condition subsequent of the policy, be voidable at the insurer's option; or it may purport to grant an indemnity which is not legally enforceable against the insurers. In none of these cases can the policy be said to be "in force," since the insurers, except in those instances where they may waive their right of repudiation, are not under any liability to the use of the vehicle at all. Nevertheless, a possible breach of condition precedent to liability, since it affects only the application of the policy to the particular liability in respect of which the breach of condition occurs, does not prejudice the continuance of the policy, which therefore remains "in force." *Vide* Mr. Hector Hughes's book on the Law relating to Road Users' Rights and Liabilities and Insurance, pp. 143 and 144 (1938 Ed.)

Sub-section (2) :—The scope of this sub-section is of a limited character. An insurance against third party risks must be taken out when the motor vehicle is driven by any person other than a servant of the owner in the course of his employment.

This sub-section grants exemption to a servant of the owner acting in his capacity as such and acts which take him *beyond the scope of his authority apparently constitute* a breach of the statutory obligation in the absence of an adequate protection by insurance.

This sub-section grants exemption from sub-section (1) of this section but personal responsibilities remain and may, therefore, give rise to liabilities in tort for personal injuries. Ibid, p. 138.

English Law :—Sub-sections (1) and (2) of sec. 94 of this Act correspond respectively to sub-sections (1) and (4) of section 35 of the Road Traffic Act, 1930, which runs as follows —

Users of motor vehicles to be insured against third party risks.

35. (1) Subject to the provisions of this part of this Act, it shall not be lawful for any person to use, or to cause or permit any other person to use, a motor vehicle on a road unless there is in force in relation to the user of the vehicle by that person or that other person, as the case may be, such a policy of insurance or such a security in respect of third party risks as complies with the requirements of this Part of this Act.

(2) If a person acts in contravention of this section, he shall be liable to a fine not exceeding fifty pounds or to imprisonment for a term not exceeding three months, or to both such fine and imprisonment, and a person convicted of an offence under this section shall (unless the Court for special reasons thinks fit to order otherwise and without prejudice to the power of the Court to order a longer period of disqualification) be disqualified for holding or obtaining a licence under Part I of this Act for a period of twelve months from the date of the conviction.

A person disqualified by virtue of a conviction under this section or of an order made thereunder for holding or obtaining a licence shall, for the purposes of Part I of this Act, be deemed to be disqualified by virtue of a conviction under the provisions of this Part

(3) Notwithstanding any enactment prescribing a time within which proceedings may be brought before a Court of summary jurisdiction, proceedings for an offence under this section may be brought—

(a) within a period of six months from the date of the commission of the alleged offence, or

(b) within a period which exceeds neither three months from the date on which it came to the knowledge of the prosecutor that the offence had been committed

nor one year from the date of the commission of the offence, whichever period is longer.

(4) This section shall not apply to vehicle owned by a local authority, a police authority, or the receiver for the Metropolitan Police District, or by a person who has deposited and keeps deposited with the Accountant-General of the Supreme Court for and on behalf of the Supreme Court the sum of fifteen thousand pounds. at any time when the vehicle is being driven by the owner or by a servant of the owner in the course of his employment, or is otherwise subject to the control of the owner

(5) This Part of this Act shall not extend to invalid carriages within the meaning of Part I of this Act or to tram cars or trolly vehicles the use of which is authorised or regulated by special Act of Parliament or by an order having the force of an Act, unless the special Act or order so provides

(6) In this section the expression, "local authority" means the council of any county, county borough or county district, the common council of the City of London and the council of any metropolitan borough, and includes any joint board or joint committee which is so constituted as to include among its members representatives of any such council.

Requirements of policies and limits of liability

95. (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which—

(a) is issued by a person who is an authorised insurer, and

(b) insures the person or classes of person specified in the policy to the extent specified in sub-section (2) against any liability which may be incurred by him or them in respect of the death of or bodily injury to any person caused by or arising out of the use of the vehicle in a public place :

Provided that a policy shall not, except as may be otherwise provided under sub-section (3) be required—

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment, or

(ii) except where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, to cover liability in respect of the death of or bodily injury to persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which a claim arises, or

(iii) to cover any contractual liability.

(2) Subject to the proviso to sub-section (1), a policy of insurance shall cover any liability incurred in respect of any one accident up to the following limits, namely :—

(a) where the vehicle is a vehicle used or adapted to be used for the carriage of goods, a limit of twenty thousand rupees ;

(b) where the vehicle is a le in which passengers are c for

hire or reward or by reason of or in pursuance of a contract of employment, in respect of persons other than passengers carried for hire or reward, a limit of twenty thousand rupees; and in respect of passengers a limit of twenty thousand rupees in all, and four thousand rupees in respect of an individual passenger, if the vehicle is registered to carry not more than six passengers excluding the driver or two thousand rupees in respect of an individual passenger, if the vehicle is registered to carry more than six passengers excluding the driver;

(c) where the vehicle is a vehicle of any other class, the amount of the liability incurred.

VIII of 1923. (3) A Provincial Government may prescribe that a policy of insurance shall in order to comply with the requirements of this Chapter cover any liability arising under the provisions of the Workmen's Compensation Act, 1923, in respect of the death of or bodily injury to any paid employee engaged in driving or otherwise in attendance on or being carried in a motor vehicle.

(4) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance or a cover note in the prescribed form and containing the prescribed particulars of any conditions subject to which the policy is issued and of any

other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.

(5) Notwithstanding anything elsewhere contained in any law, a person issuing a policy of insurance under this section shall be liable to indemnify the person or classes of person specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of person.

Notes.

Notes on Clauses.—The limits of cover are those recommended by the Motor Vehicles Insurance Committee. In sub-section (3) power is given to Provincial Governments to require, in addition, that the liability of an owner in respect of claims arising under the Workmen's Compensation Act shall also be covered by insurance.

Changes made by the Select Committee:—**Sub-clause (1)**—The change in clause (b) are formal, and clarifying only. Those in the proviso, clause (i), are formal also. In clause (ii) the wording has been altered to agree with that used in sub-clause (2) (b) and a reference has been inserted to cover workmen being conveyed to work. This follows the English Act. The new additional clause (iii) is also taken from the English Act. In sub-clause (2) the Select Committee reduced the limit of liability fixed by the clause in two cases. It inserted the words "in respect of any one accident" to clarify the intention of the sub-clause. The other change in clause (b) is consequential on that made in sub-clause (1), proviso clause (ii). In sub-clause (4) the Select Committee made a formal amendment and inserted a provision allowing cover-notes to serve in lieu of a certificate of insurance. The changes in sub-clause (5) are formal only.

Changes made by the Legislative Assembly:—In part (b) of sub-section (2) the words 'carried for hire or reward" were inserted after the words "other than passengers", the word "thirty" has been substituted by the word "twenty" and the words "and in respect of passengers a limit ....

excluding the driver" have been substituted in place of words "and in respect of each passenger which the vehicle is registered to carry, a limit of five thousand rupees, if the vehicle is registered to carry not more than six passengers excluding the driver and a limit of three thousand rupees, if the vehicle is registered to carry more than six passengers excluding the driver."

Bodily Injury :—These words include not only physical injuries, but also illness induced by severe mental shock. *Dulien* v. *White* (1901) 2 K. B. 669; *Hambrook* v. *Stokes* (1925) 1 K. B. 141. The insurers' undertaking, therefore, extends to liabilities for injury of an internal or mental kind, in addition to those within the popular conception of the word "bodily" injury. Quoted from page 291 of Mr Hector Hughes's book on the Law relating to Road Users' Rights, Liabilities and Insurance.

Sub-section (1) (b). —The effect of the provision in sub-section 1(b), which requires the policy to cover "such person, persons or classes of persons.... in respect of any liability which may be incurred by him or them," particularly in view of the terms of section 35, sub-section 1 of the Road Traffic Act, 1930, is to require the owner of a motor vehicle to be covered by insurance for much wider risks than the negligent driving of himself and or his servants acting within the scope of their employment. At common law the master is liable only where his servant is guilty of negligent driving in the course of his employment and within the apparent scope of his authority. See *Irwin* v. *Waterloo Taxi-cab Co., Ltd*, (1912) 3 K. B. 588, C. A.; 81 L. J. K. B. 118; 18 W. R. 467. (Quoted from Mr. F. Llewellyn Jone's book on the Road Traffic Law, page 127).

Clause (I) :—A policy is not required to cover liability to any person in the employment of the person or persons insured by it, in respect of death or bodily injury arising out of and in the course of his employment. Since a policy must be taken to insure the person or class of persons specified in it as being entitled to its protection, the employees within the scope of this present exception are those in the direct employ of the insured named in the policy and also of others driving the vehicle with his order or permission. The exception does not extend beyond this class, however, whether the injured party is entitled to claim compensation under the Workmen's Compensation Act, 1925 (15 and 16 Geo V. C. 84), or not, or

whether in fact he or his dependants have so claimed, and the liability devolving on the insured is to the employer, who seeks indemnity under s. 30 of that Act. Quoted from page 158 of Mr. Hector Hughes's book on the Law relating to Road Users' Rights, Liabilities and Insurance.

Out of his employment :—An injury arises "Out of", the employment if it is produced by an act which the employee is employed to do, either specifically or as one of a class of duties, or by a peril to which he is exposed by the fact of his being engaged about his duties. This is so whether the act is done upon order, or in accordance with accepted custom ; but not if the employee is acting for his own purposes, or in contravention of orders, or in an unauthorised manner. A risk which is inherent in the way in which and the time and place at which the work is done, whether due to the character of the work itself or to the proximity of third persons or animals, or to the damages common to all persons who occupy a similar position, arises "out of" the employment It is immaterial that others not so employed are also subject to the risk, if the nature of the employment itself exposes the employee to it in a particular degree. Quoted from page 160, ibid.

In the course of his employment :—An employee is acting "in the course of" his employment when he is in his place of work, or on premises or a conveyance in the control of his employer, which he must use to get to his place of work, or in any place where his work requires him to be, providing he is acting in his employer's interests and not in his own. Where the employment is of a continuous nature which requires the employee to be available for service at any time, the employee is "in the course of" his employment at any time, even during hours set apart for his personal use, when he is not actually absent from the scene of his work, either with or without leave. Quoted from page 159, ibid.

Clause (ii) :—By s. 36 (1) (b) (ii) of the Road Traffic Act, 1930 (which corresponds to this clause) liability for the death of or bodily injury to passengers is not within the scope of compulsory insurance with two exceptions, namely, the case of a vehicle in which passengers are carried for hire or reward, or by reason or in pursuance of a contract of employment. These exceptions to the exception are directed to the vehicle and not to the passengers. Consequently, if a vehicle is used to carry passengers either for hire or reward or by

reason or in pursuance of a contract of employment, it is necessary to insure against not only liability to passengers of these categories, but also to any other passengers carried as well. Moreover, there seems to be no basis for the inclusion of the word "habitually" before the phrase "carried for hire," so that, whilst a vehicle designed or adopted for the carriage of passengers would require continuous passenger cover, a vehicle not so constructed and only occasionally so used would also apparently require unlimited passenger indemnity whilst being used for either of these purposes. Quoted from page 162, Ibid.

Carried for hire or reward :—See Notes under section 41 under the heading "plying for hire."

By reason of or in pursuance of a contract of employment:—The expression "by reason of or in pursuance of a contract of employment," is considerably wider than "arising out of or in the course of the employment." Where an employer places a conveyance at the disposal of his workmen, injuries sustained by them whilst travelling in it fulfil the latter qualification if there is some necessity or obligation upon them to use it. This is so notwithstanding that the employer is bound by an express or implied term of his contract to provide the conveyance, although if the circumstances of the case render the conveyance the only possible means of transit there may be implied a condition in the workmen's contract to make him use it. Consequently, there may arise cases of injury which do not fall within the ambit of the Workmen's Compensation Acts when employees travel in a conveyance provided for their use, and this gap is presumably intended to be met by ensuring insurance protection to an employee who is injured in such circumstances, and who recovers damages from the owner or driver of the vehicle supplied. Quoted from page 164, *ibid.*

Clause (iii) :—It is not necessary to insure against any contractual liability, by which is meant not only liability arising from direct breach of contract but also liability which devolves upon the injured person by reason of a contract already subsisting. Quoted from page 166, Ibid.

Accident :—The essence of the accident is something fortuitous which could not be or was foreseen. The expression applies both to the unexpected results of a natural act and to

the natural result of an unexpected or fortuitous act. In the sense used in the phrases quoted above, the word "accident" refers more particularly to the factual elements in the occurrence rather than the nature of the result. In considering the application of the policy, therefore, the question is whether the occurrence which gives rise to the liability was unexpected and fortuitous from the point of view of the insured. Acts deliberately done by him, whether or not on grounds of public policy they fall within the protection which a policy can legally give, are certainly not within the expression "accident", and fall, therefore, outside the policy. Quoted from page 289, *Ibid*

See notes under sec. 87 under the heading "Accidents".

Cover note :—A cover note may be issued, either by the insurer's officials or by certain agents, in the following circumstances —

(a) After acceptance of the proposal and pending issue of the policy, or

(b) Before acceptance and pending the insurer's decision as to acceptance or refusal. Quoted from page 266, *Ibid.*

English law :—Sub-sections 1, 4 and 5 of section 95, correspond respectively to sub-sections 1, 5 and 4 of sec 36 of the Road Traffic Act, 1930, which, as amended by the Road and Rail Traffic Act, 1933, runs as follows :—

Requirements in respect of policies.

36.—In order to comply with the requirements of this Part of this Act, a policy of insurance must be a policy which—

(a) is issued by a person who is an authorised insurer within the meaning of this Part of this Act, and

(b) insures such person, persons or classes of persons as may be specified in the policy in respect of any liability which may be incurred by him or them in respect of the death of or bodily injury to any person caused by or arising out of the use of the vehicle on a road :

Provided that such a policy shall not be required to cover—

(i) liability in respect of the death arising out of and in the course of his employment of a person in the

employment of an insured person by the policy or c bodily injury sustained by such a person arisin out of and in the course of his employment; or

(ii) except in the case of a vehicle in which passen gers are carried for hire or reward or b reason of or in pursuance of a contract o employment, liability in respect of the death of o bodily injury to persons being carried in or upo or entering or getting on to or alighting from th vehicle at the time of the occurrence of the event ou of which the claims arise; or

(iii) any contractual liability (b)

(2) Where any payment is made (whether or not with an admission of liability) by—

(a) an authorised insurer under or in consequence of a policy issued under this Part of this Act; or

(b) the owner of a vehicle in relation to the user of which a security under this Part of this Act is in force; or

(c) the owner of a vehicle who has made a deposit under this Part of this Act, in respect of the death of or bodily injury to any person arising out of the use of a motor vehicle on a road or in a place to which the public have a right of access, and the person who has so died or been bodily injured has to the knowledge of the authorised insurer or such owner as the case may be received treatment at a hospital, whether as an in-patient or as an out-patient, in respect of the injury so arising, there shall also be paid by the authorised insurer or such owner to such hospital the expenses reasonably incurred by the hospital in affording such treatment, after deducting from such expenses any moneys actually received by the hospital in payment of a specific charge for such treatment, not being moneys received under any contributory scheme:

Provided that the amount to be paid by the authorised insurer or such owner shall not exceed fifty pounds for each person so treated as an in-patient, or five pounds for each person so treated as an out-patient

For the purposes of this sub-section the expression 'hos-

pital' means an institution (not being an institution carried on for profit) which provides medical or surgical treatment for in-patients and the expression 'expenses reasonably incurred' means—

(a) in relation to a person who receives treatment at a hospital as an in-patient, an amount for each day such person is maintained in such hospital representing the average daily cost for each in patient of the maintenance of the hospital and the staff thereof and the maintenance and treatment of the in-patients therein ; and

(b) in relation to a person who receives treatment at a hospital as an out-patient, reasonable expenses actually incurred.

(3) For the purposes of this Part of this Act, the expression "authorised insurer" means an assurance company or an underwriter in whose case the requirements of the Assurance Companies Act, 1909, as amended by this Act, with respect to deposits by assurance companies and deposits and guarantees by underwriters are complied with.

(4) Notwithstanding anything in any enactment, a person issuing a policy of insurance under this section shall be liable to idemnify the persons or classes of persons specified in respect of any liability which the policy purports to cover in the case of those persons or classes of persons.

(5) A policy shall be of no effect for the purposes of this Part of this Act unless and until there is delivered by the insurer to the person by whom the policy is effected a certificate (in this Part of this Act referred to as a "certificate of insurance") in the prescribed form and containing such particulars of any conditions subject to which the policy is issued and of any other matters as may be prescribed, and different forms and different particulars may be prescribed in relation to different cases or circumstances.

(6) In this Part of this Act the expression "policy of insurance" includes a covering note.

96. (1) If, after a certificate of insurance or a cover note has been issued under sub-section (4) of section 95 in favour of the

Duty of insurers to satisfy judgments against persons insured in respect of third party risks.

person by whom a policy has been effected, judgment in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (1) of section 95 (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment-debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment unless before or after the commencement of the proceedings in which the judgment is given the insurer had notice through the Court of the bringing of the proceedings or in respect of any judgment so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:—

(a) that the policy was cancelled by mutual consent or by virtue of any provision contained therein before the accident giving rise to the liability, and that either the certificate of insurance was surrendered to the insurer or that the

person to whom the certificate was issued has made an affidavit stating that the certificate has been lost or destroyed, or that either before or not later than fourteen days after the happening of the accident the insurer has commenced proceedings for cancellation of the certificate after compliance with the provisions of section 105 ; or

(b) that there has been a breach of a specified condition of the policy, *being one of the following conditions*, namely :—

(i) a condition excluding the use of the vehicle—

(*a*) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward ; or

(*b*) for organised racing and speed testing ; or

(*c*) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a public service vehicle or a goods vehicle ; or

(*d*) without the side car being attached, where the vehicle is a motor cycle ; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who

has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(c) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular.

(3) Where a certificate of insurance or cover note has been issued under sub-section (4) of section 95 to the person by whom the policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any conditions other than in clause (b) of sub-section (2) shall, as respects such liabilities as are required to cover by a policy under clause (b) of sub-section (1) of section 95, be of no effect :

Provided that any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this sub-section shall be recoverable by the insurer from that person.

(4) If the amount which an insurer becomes liable under this section to pay in respect of a liability incurred by a person insured by a policy exceeds the amount for which the insurer would apart from the provisions of this section be liable under the

policy in respect of that liability, the insurer shall be entitled to recover the excess from that person.

(5) In this section the expressions "material fact" and "material particular" mean, respectively, a fact or particular of such a nature as to influence the judgment of a prudent insurer in determining whether he will take the risk and, if so, at what premium and on what conditions, and the expression "liability covered by the terms of the policy" means a liability which is covered by the policy or which would be so covered but for the fact that the insurer is entitled to avoid or cancel or has avoided or cancelled the policy.

(6) No insurer to whom the notice referred to in sub-section (2) has been given shall be entitled to avoid his liability to any person entitled to the benefit of any such judgment as is referred to in sub-section (1) otherwise than in the manner provided for in sub-section (2).

Notes.

Notes on Clauses —Sub-clause (3) is a variation of section 38 of the English Road Traffic Act, 1930 and section 12 of the English Road Traffic Act, 1934 These sections provide that an insurer could not repudiate liability on account of the breach of certain specified conditions that the insurer might have inserted in the policy. The general effect of this provision has been given close attention by the Cassel Committee whose report has recently been published and they have recommended that instead of specifying conditions for breach of which an insurer would not be able to avoid liability, it would be better to specify those for breach of which liability could be avoided The draft of the sub-clause (3) follows their recommendations in this respect. It is more satisfactory as it defines the exact position of the insurer in relation to the conditions he may impose

Changes made by the Select Committee:—Sub-clauses (2), (3) and (4) of the Bill have been replaced by two new sub-clauses which together with the new sub-clause now numbered sub-clause (6) have the effect of considerably simplifying legal proceedings in connection with any contested claim. The effect of these provisions is to secure that such proceedings shall be confined to one suit only, in which the insurer shall have a right on receiving notice through the Court to contest his liability on certain of the grounds contained in the Bill as drafted. The Select Committee has, however, excluded several of the conditions contained in the draft Bill for breach of which an insurer might have a licence declared cancelled. Sub-clauses (1), (6) and (7), now numbered (1), (4) and (5), remain unchanged except for formal and consequential amendments.

Changes made by the Legislative Assembly:—In sub-section (1), for the word 'judgment' where it occurred for the second time, the word "decree" has been substituted as decree is that operative part of the judgment which is executable and which is executed. In the same sub-section the words "not exceeding the sum assured" have been inserted after the words "any sum" so that the insurer would be liable only for the sum assured although the decree may be for a larger amount. The words "as if he were the judgment debtor" have been inserted in the same sub-section to remove doubts, if any, regarding the execution of the decree against the insurer. In the same sub-section the words "together with" have been substituted in place of "including" to clear an ambiguity.

In sub-section (2) the words "or by virtue of any provision contained therein" have been inserted after the words "mutual consent" with a view to make it clear that if there was a condition in the policy under which it could be cancelled such a condition could be urged by the insurer. In clause (a) of this sub-section the words "or that either before or not later than fourteen days . . 105" have been inserted. In part (i) (a) of this sub-section the words "on the date of the contract of insurance" have been inserted to make the meaning clear. In part (ii) of this sub-section the words "a named person or persons or by" have been inserted after the words "excluding driving by" with a view to give an option to the insurer to include in the policy names of undesirable drivers.

Liability:—A plaintiff claiming damages for personal

injury in a running down case would have to prove that he was injured, that his injury was due to the defendant's fault and the fact and extent of his loss and damage. *Winnipeg Electric Co* v. *Jacob Geel*, A I R. 1932 P. C. 246 (249) = 139 I. C. 663. See Notes under section 112 under the heading "Burden of proof".

Clause (iii) :—Riot.—Section 146 of the Indian Penal Code provides that whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly, is guilty of the offence of rioting. Section 141 of the same Code, which defines unlawful assembly, runs as follows :— Rioting.

141. An assembly of five or more persons is designated an 'unlawful assembly,' if the common object of the persons composing that assembly is— Unlawful assembly

First.—To overawe by criminal force, or show of criminal force, the Legislative or Executive Government of India or the Government of any Presidency, or any Lieutenant-Governor, or any public servant in the exercise of the lawful power of such public servant, or

Second.—To resist the execution of any law, or of any legal process; or

Third.—To commit any mischief or criminal tresspass, or other offence, or

Fourth.—By means of criminal force, or show of criminal force, to any person to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right, or

Fifth.—By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation.—An assembly, which was not lawful when it assembled, may subsequently become an unlawful assembly.

Civil Commotion.—Civil commotion or tumult implies something more than riot. It is a step in the development of civil war, not amounting to insurrection. It implies acts done in concert for a common purpose, but without usurpation of authority. Vide page 282 of Mr. Hector Hughes's book on the Law relating to Road Users' Rights, Liabilities and Insurance.

Sub-section (2) (c):—In addition to the requirements to prove materiality, the onus is also upon the insurers to prove that the policy was, in fact, obtained by the non-disclosure or misrepresentation. Vide page 241, *Ibid.*

The following groups of facts may be regarded as material:—

(a) facts which suggest that the nature, condition, user, surroundings or other circumstances of the subject-matter of insurance create an abnormal exposure to risk.

(b) Facts which suggest that the insured or the persons for whose benefits the insurance is to enure are bad risks, or are persons who by reason of their nationality, accident record, insurance history, physical infirmities or "moral hazard" cannot be accepted for insurance without special consideration.

(c) Facts which suggest that the insured is motivated by something beyond ordinary prudence in effecting his insurance, such as speculative over-valuation.

(d) Facts as to which special inquiries are made, or which if disclosed attract a higher premium to the risk, or which to the knowledge of the proposer are otherwise regarded by insurers as material.

Certain facts, some of which might normally be considered to be material, need not be disclosed. These are:—

(1) Any circumstance which diminishes the risk.

(2) Any circumstance which is known, or presumed to be known to the insurer. The insurer is presumed to know matters of common notoriety or knowledge and matters which an insurer in the ordinary course of business as such ought to know.

(3) Any circumstance as to which the insurer waives information. But mere failure to make inquiries is not a waiver unless, through some unsatisfactory answer or other means, they are put on enquiry and fail to follow it up. Quoted from pages 231-234, *Ibid.*

English law —Sub-sections (1), (2), (4) and (5) of section 96 correspond to sub-sections (1), (2), (4) and (5) of section 10 of the Road Traffic Act, 1934, (24 & 24 Geo. 5. Ch. 50) which runs as follows :—

10.—(1) If, after a certificate of insurance has been delivered under sub-section (5) of section thirty-six of the principal Act to the person by whom a policy has been effected, judgment in respect of any such liability as is required to be covered by a policy under paragraph (b) of sub-section (1) of section thirty-six of the principal Act (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled, the policy the insurer shall, subject to the provisions of this section, pay the persons entitled to the benefit of the judgment any sum payable thereunder in respect of the liability, including any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

Duty of insurers to satisfy judgments against persons insured in respect of third party risks.

(2) No sum shall be payable by an insurer under the foregoing provisions of this section—

(a) in respect of any judgment, unless before or within seven days after the commencement of the proceedings in which the judgment was given, the insurer had notice of the bringing of the proceedings ; or

(b) in respect of any judgment, so long as execution thereon is stayed pending an appeal , or

(c) in connection with any liability, if before the happening of the event which was the cause of the death or bodily injury giving rise to the liability, the policy was cancelled by mutual consent or by virtue of any provision contained therein, and either—

(i) before the happening of the said event the certificate was surrendered to the insurer, or the person to whom

the certificate was delivered made a statutory declaration stating that the certificate had been lost or destroyed, or

(ii) after the happening of the said event, but before the expiration of a period of fourteen days from the taking effect of the cancellation of the policy, the certificate was surrendered to the insurer, or the person to whom the certificate was delivered made such a statutory declaration as aforesaid, or

(iii) either before or after the happening of the said event, but within the said period of fourteen days, the insurer has commenced proceedings under this Part of this Act in respect of the failure to surrender the certificate.

(3) No sum shall be payable by an insurer under the foregoing provisions of this section, if, in an action commenced before, or within three months after, the commencement of the proceedings in which the judgment was given, he has obtained a declaration that, apart from any provision contained in the policy, he is entitled to avoid it on the ground that it was obtained by the non-disclosure of a material fact, or by a representation of fact which was false in some material particular, or, if he has avoided the policy on that ground, that he was entitled so to do apart from any provision contained in it:

Provided that an insurer who has obtained such a declaration as aforesaid in an action shall not thereby become entitled to the benefit of this sub-section as respects any judgment obtained in proceedings commenced before the commencement of that action, unless before or within seven days after the commencement of that action he has given notice thereof to the person who is the plaintiff in the said proceedings specifying the non-disclosure or false representation on which he proposes to rely, and any person to whom notice of such an action is so given shall be entitled, if he thinks fit, to be made a party thereto.

(4) If the amount which an insurer becomes liable under this section to pay in respect of a liability of a person insured by a policy exceeds the amount for which he would, apart from the provisions of this section, be liable under the policy in respect of that liability, he shall be entitled to recover the excess from that person.

(5) In this section the expression "material" means of such a nature as to influence the judgment of a prudent insurer in determining whether he will take the risk, and, if so, at what premium and on what conditions, and the expression "liability covered by the terms of the policy" means a liability which is covered by the policy or which would be so covered but for the fact that the insurer is entitled to avoid or cancel, or has avoided or cancelled, the policy.

(6) In this Part of this Act references to a certificate of insurance in any provision relating to the surrender, or the loss or destruction, of a certificate of insurance shall, in relation to policies under which more than one certificate is issued, be construed as references to all the certificates, and shall, where any copy has been issued of any certificate, be construed as including a reference to that copy.

Section 38 of the Road Traffic Act, 1930, referred to above in Notes on Clauses, runs as follows :—

Certain conditions to policies or securities to be of no effect.

38 Any condition in a policy or security issued or given for the purposes of this Part of this Act, providing that no liability shall arise under the policy or security or that any liability so arising shall cease, in the event of some specified thing being done or omitted to be done after the happening of the event giving rise to a claim under the policy or security, shall be of no effect in connection with such claims as are mentioned in paragraph (b) of sub-section (1) of section thirty-six ;

Provided that nothing in this section shall be taken to render void any provision in a policy or security requiring the person insured or secured to repay to the insurer or the giver of the security any sums which the latter may have become liable to pay under the policy or security and which have been applied to the satisfaction of the claims of third parties.

Section 12 of the Road Traffic Act, 1934, to which also a reference has been made above in Notes on Clauses, runs as follows :—

Avoidance of restrictions on scope of policies covering

12. Where a certificate of insurance has been delivered under sub-section (5) of section thirty-six of the principal Act to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the per-

third party risks.

sons insured thereby by reference to any of the following matters :—

(a) the age or physical or mental condition of persons driving the vehicle ; or

(b) the condition of the vehicle ; or

(c) the number of persons that the vehicle carries ; or

(d) the weight or physical characteristics of the goods that the vehicle carries ; or

(e) the times at which or the areas within which the vehicle is used , or

(f) the horse power or value of the vehicle ; or

(g) the carrying on the vehicle of any particular apparatus ; or

(h) the carrying on the vehicle of any particular means of identification other than any means of identification required to be carried by or under the Roads Act, 1920 ;

10 & 11 Geo. 5, c. 72.

shall, as respects such liabilities as are required to be covered by a policy under paragraph (b) of sub-section (1) of section thirty-six of the principal Act, be of no effect :

Provided that nothing in this section shall require an insurer to pay any sum in respect of the liability of any person otherwise than in or towards the discharge of that liability, and any sum paid by an insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this section shall be recoverable by the insurer from that person.

Rights of third parties against insurers on insolvency of the insured.

97. (1) Where under any contract of insurance effected in accordance with the provisions of this Chapter a person is insured against liabilities which he may incur to third parties then—

(a) in the event of the person becoming insolvent or making a composition or arrangement with his creditors, or

(b) where the insured person is a Company, in the event of a winding

up order being made or a resolution for a voluntary winding up being passed with respect to the Company or of a receiver or manager of the Company's business or undertaking being duly appointed, or of possession being taken by or on behalf of the holders of any debentures secured by a floating charge of any property comprised in or subject to the charge,

if, either before or after that event, any such liability is incurred by the insured person, his rights against the insurer under the contract in respect of the liability shall, *notwithstanding anything to the contrary in* any provision of law, be transferred to and vest in the third party to whom the liability was so incurred.

(2) Where an order of administration of the estate of a deceased debtor is made according to the law of insolvency, then, if any debt provable in insolvency is owing by the deceased in respect of a liability to a third party against which he was insured under a contract of insurance in accordance with the provisions of this Chapter, the deceased debtor's rights against the insurer in respect of that liability shall, notwithstanding anything to the contrary in any provision of law, be transferred to and vest in the person to whom the debt is owing.

(3) Any condition in a policy issued for the purpose of this chapter purporting either directly or indirectly to avoid the policy or to alter the rights of the parties thereunder upon the happening to the insured person

of any of the events specified in clause (a) or clause (b) of sub-section (1) or upon the making of an order for the administration of the estate of a deceased debtor according to the law of insolvency shall be of no effect.

(4) Upon a transfer under sub-section (1) or sub-section (2) the insurer shall be under the same liability to the third party as he would have been to the insured person, but—

(a) if the liability of the insurer to the insured person exceeds the liability of the insured person to the third party, nothing in this Chapter shall affect the rights of the insured person against the insurer in respect of the excess, and

(b) if the liability of the insurer to the insured person is less than the liability of the insured person to the third party, nothing in this Chapter shall affect the rights of the third party against the insured person in respect of the balance.

Notes

English law:—Section 11 of the Road Traffic Act, 1934 (24 and 25 Geo. 5, Ch. 50), which corresponds to section 97 of this Act, runs as follows:—

Bankruptcy &c. of insured persons not to affect certain claims by third parties.

11. Where a certificate of insurance has been delivered under sub-section (5) of section thirty-six of the principal Act to the person by whom a policy has been effected, the happening in relation to any person insured by the policy of any such event as is mentioned in sub section (1), or sub-section (2), of section one of the Third Parties (Rights against Insurers) Act, 1930, shall, notwithstanding anything in that Act, not affect any such liability of that person as is required to be covered by a policy under paragraph (b) of sub-section (1) of section thirty-six of the Principal Act, but nothing in this

20 & 21 Geo. 5. c. 25.

section shall affect any rights against the insurer conferred by that Act on the person to whom the liability was incurred.

98. (1) No person against whom a claim is made in respect of any liability referred to in clause (b) of sub-section (1) of section 95 shall on demand by or on behalf of the person making the claim refuse to state whether or not he was insured in respect of that liability by any policy issued under the provisions of this Chapter, or would have been so insured if the insurer had not avoided or cancelled the policy, nor shall he refuse, if he was or would have been so insured, to give such particulars with respect to that policy as were specified in the certificate of insurance issued in respect thereof. Duty to give information as to insurance.

(2) In the event of any person becoming insolvent or making a composition or arrangement with his creditors or in the event of an order being made for the administration of the estate of a deceased person according to the law of insolvency, or in the event of a winding up order being made or a resolution for a voluntary winding up being passed with respect to any company or of a receiver or manager of the company's business or undertaking by or on behalf of the holders of any debentures secured by a floating charge on any property comprised in or subject to the charge, it shall be the duty of the insolvent debtor, personal representative of the deceased debtor or company, as the case may be, or the official assignee or receiver in insolvency, trustee, liquidator, receiver or manager, or person in possession of the property to give at the request of any person claiming that the insolvent debtor, deceased debtor or company is under such liability to him as is covered by the provi-

sions of this Chapter, such information as may reasonably be required by him for the purpose of ascertaining whether any rights have been transferred to and vested in him by section 97, and for the purpose of enforcing such rights, if any; and any such contract of insurance as purports whether directly or indirectly to avoid the contract or to alter the rights of the parties thereunder upon the giving of such information in the events aforesaid, or otherwise to prohibit or prevent the giving thereof in the said events, shall be of no effect.

(3) If, from the information given to any person in pursuance of sub-section (2) or otherwise, he has reasonable ground for supposing that there have or may have been transferred to him under this Chapter rights against any particular insurer, that insurer shall be subject to the same duty as is imposed by the said sub-section on the person therein mentioned.

(4) The duty to give the information imposed by this section shall include a duty to allow all contracts of insurance, receipts for premiums, and other relevant documents in the possession or power of the person on whom the duty is so imposed to be inspected and copies thereof to be taken.

Notes.

Changes made by the Select Committee:—Sub-clause (3)— The change made is a drafting improvement.

English law:—Sub-section (1) of Sec. 93 corresponds to sec. 13 of the Road Traffic Act, 1931, which runs as follows:—

13—(1) Any person against whom a claim is made in respect of any such liability as is required to be covered by a

Duty of persons against whom claims are made to give information as to insurance.

policy under paragraph (b) of sub-section (1) of section thirty-six of the principal Act shall, on demand by or on behalf of the person making the claim, state whether or not he was insured in respect of that liability by any policy having effect for the purposes of Part II of the principal Act, or would have been so insured if the insurer had not avoided or cancelled the policy, and if he was or would have been so insured, give such particulars with respect to that policy as were specified in the certificate of insurance delivered in respect thereof under sub-section (5) of section thirty-six of the principal Act.

(2) If, without reasonable excuse, any person fails to comply with the provisions of this section, or wilfully makes any false statement in reply to any such demand as aforesaid, he shall be guilty of an offence

Settlement between insurers and insured persons.

99. (1) No settlement made by an insurer in respect of any claim which might be made by a third party in respect of any liability of the nature referred to in clause (b) of sub-section (1) of section 95 shall be valid unless such third party is a party to the settlement.

(2) Where a person who is insured under a policy issued for the purposes of this Chapter has become insolvent, or where, if such insured person is a company, a winding up order has been made or a resolution for a voluntary winding up has been passed with respect to the company, no agreement made between the insurer and the insured person after liability has been incurred to a third party and after the commencement of the insolvency or winding up, as the case may be, nor any waiver, assignment or other disposition made by or payment made to insured person after the commencement aforesaid shall be effective to defeat the rights transferred to the third party under this Chapter, but those rights shall be the same as if no such agreement, waiver, assignment or disposition or payment has been made

Notes.

Changes made by the Select Committee:—The Select Committee transferred to this section the provisions contained in sub-clause (1) of old clause 100 (now 102) of the Bill. They are germane to this section and were misplaced in old clause 100 (now 102).

Saving in respect of sections 97, 98 and 99.

100. (1) For the purposes of sections 97, 98 and 99, a reference to "liabilities to third parties" in relation to a person insured under any policy of insurance shall not include a reference to any liability of that person in the capacity of insurer under some other policy of insurance.

(2) The provisions of sections 97, 98 and 99 shall not apply where a Company is wound up voluntarily merely for the purposes of reconstruction or of an amalgamation with another Company.

Notes.

Changes made by the Select Committee:—The change is formal.

Insolvency of insured persons not to affect liability of insured or claims by third parties.

101. Where a certificate of insurance has been issued to the person by whom a policy has been effected, the happening in relation to any person insured by the policy of any such event as is mentioned in sub-section (1) or sub-section (2) of section 97 shall, notwithstanding anything in this Chapter, not affect any liability of that person of the nature referred to in clause (b) of sub-section (1) of section 95; but nothing in this section shall affect any rights against the insurer conferred under the provisions of sections 97, 98 and 99 on the person to whom the liability was incurred.

102. Notwithstanding anything contained in section 306 of the Indian Succes-

sion Act, 1925, the death of a person in whose favour a certificate of insurance or cover note had been issued, if it occurs after the happening of an event which has given rise to a claim under the provisions of this Chapter, shall not be a bar to the survival of any cause of action arising out of the said event against his estate or against the insurer.

Effect of death on certain causes of action xxxix of 1925.

Notes.

Changes made by the Select Committee:—See notes on section 99.

The changes made in the remaining portion of the section are consequential on those made in section 95(1) [old 93(4)].

Section 306 of the Indian Succession Act.—The provision of this section is an exception to the general law laid down in section 306 of the Indian Succession Act (XXXIX of 1925) which runs as follows:—

306. All demands whatsoever and all rights to prosecute or defend any action or special proceeding existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators; except causes of action for defamation, assault, as defined in the Indian Penal Code, or other personal injuries not causing the death of the party; and except also the cases where, after the death of the party, the relief sought could not be enjoyed or granting it would be nugatory.

Demands and rights of action of or against deceased survive to and against executor or administrator.

Illustrations

(i) A collision takes place on a railway in consequence of some neglect or default of an official, and a passenger is severely hurt, but not so as to cause death. He afterwards dies without having brought any action. The cause of death does not survive.

(ii) A sues for divorce. A dies. The cause of action does not survive to his representative.

Scope of the section.—Although the contract of motor insurance is a personal one, it does not cease entirely upon

the death of the insured. It passes, together with the vehicle, to the personal representatives, who may enforce it for the benefit of the estate, subject, in the case where the estate is administered according to the bankruptcy laws, to the accrued rights of third parties. So far, however, as the third party clauses are concerned, it appears to be doubtful how they can survive as regards future liabilities, since the liabilities undertaken by the insurers are essentially those arising from the use of the vehicle by the insured person. When liability has been incurred by the insured before his death, so that the right of action persists against his estate, the executors or administrators are subject to this liability, and by special recognition on the face of the policy are indemnified against it Vide page 344 of Mr. Hector Hughes's book on the Law relating to Road Users' Rights, Liabilities and Insurance.

Effect of certificate of insurance.

103. When an insurer has issued a certificate of insurance in respect of a contract of insurance between the insurer and the insured person, then—

(a) if and so long as the policy described in the certificate has not been issued by the insurer to the insured, the insurer shall, as between himself and any other person except the insured, be deemed to have issued to the insured person a policy of insurance conforming in all respects with the description and particular stated in such certificate; and

(b) if the insurer has issued to the insured the policy described in the certificate, but the actual terms of the policy are less favourable to persons claiming under or by virtue of the policy against the insurer either directly or through the insured than the particulars of the policy as stated in the certi-

ficate, the policy shall, as between the insurer and any other person except the insured, be deemed to be in terms conforming in all respects with the particulars stated in the said certificate.

104. (1) Whenever the period of cover under a policy of insurance issued under the provisions of this Chapter is terminated or suspended by any means before its expiration by effluxion of time, the insured person shall within seven days after such termination or suspension deliver to the insurer by whom the policy was issued the latest certificate of insurance given by the insurer in respect of the said policy, or, if the said certificate has been lost or destroyed, make an affidavit to that effect.

Duty to surrender certificate on cancellation of policy.

(2) Whoever fails to surrender a certificate of insurance or to make an affidavit, as the case may be, in accordance with the provision of this section shall be punishable with fine which may extend to fifteen rupees for every day that the offence continues subject to a maximum of five hundred rupees.

Notes.

Notes on Clauses.—Clause (2)—This is recommended by the Motor Vehicles Insurance Committee

Changes made by the Legislative Assembly:—The words "subject to a maximum of five hundred rupees" have been added at the end as it was thought desirable to have a maximum.

105. Whenever a policy of insurance issued under the provisions of this Chapter is cancelled or suspended by the insurer who has issued the policy, the insurer shall within seven days notify such cancellation or suspension to the registering authority in

Duty of insurer to notify registering authority cancellation or suspension of policy

whose record the registration of the vehicle covered by the policy of insurance is recorded or to such other authority as the Provincial Government may prescribe.

Notes.

Notes on Clauses :—This is recommended by the Motor Vehicles Insurance Committee.

English law :—The corresponding section of the Road Traffic Act, 1934, runs as follows —

Duty to surrender certificate on cancellation of policy.

14. Where a certificate of insurance has been delivered under sub-section (5) of section thirty-six of the Principal Act to the person by whom a policy has been effected and the policy is cancelled by mutual consent or by virtue of any provision in the policy, the person to whom the certificate was delivered shall, within seven days from taking effect of the cancellation, surrender the certificate to the insurer or, if it has been lost or destroyed, make a statutory declaration to that effect, and if he fails so to do he shall be guilty of an offence.

Production of certificate of insurance.

106. (1) Any person driving a motor vehicle in any public place shall on being so required by a police officer in uniform produce the certificate of insurance relating to the use of the vehicle :

Provided that if the driver of a motor vehicle within seven days from the date on which the production of the certificate of insurance was so required produces the certificate at such police station as may have been specified by him at the time its production was required he shall not be liable to conviction under this sub-section by reason only of failure to produce the certificate to the officer.

(2) If, where owing to the presence of a motor vehicle in a public place an accident occurs involving bodily injury to another

person, the driver of the vehicle does not at the time produce the certificate of insurance to a police officer, he shall produce the certificate of insurance at the police station at which he makes the report required by section 89:

Provided that no person shall be liable to conviction under this sub-section by reason only of failure to produce the certificate of insurance if within seven days from the occurrence of the accident he produces the certificate at such police station as may be specified by him to the police officer at the site of the accident or to the officer in charge of the police station at which he reported the accident.

(3) The owner of a motor vehicle shall give such information as he may be required by or on behalf of a police officer empowered in this behalf by the Provincial Government to give for the purpose of determining whether the vehicle was or was not being driven in contravention of section 94 and on any occasion when the driver was required under this section to produce his certificate of insurance.

(4) In this section the expression, "produce his certificate of insurance" means produce for examination the relevant certificate of insurance or such other evidence as may be prescribed that the vehicle was not being driven in contravention of section 94.

Notes

Changes made by the Select Committee —Sub-clause (1) — The Select Committee extended the time limit allowed for production of certificate of insurance In sub-clause (2) it removed the provision enabling a person other than a police

officer to demand production of the certificate of insurance. The other changes made are formal or self-explanatory.

Changes made by the Legislative Assembly :—In the proviso to sub section (2) the word "seven" has been substituted for the word "five".

Driving in any public place :—The obligation for production of the certificate of insurance on demand by a police officer in uniform arises only when a person is driving a motor vehicle in any public place It cannot, however, arise when the vehicle is not being driven, nor can it arise when the vehicle is being driven but in any public place.

Proviso to sub-section (1) :—This proviso applies only when a driver, being required to produce the certificate of insurance, fails to produce it but specifies at that time that he will produce it at a particular police station If the driver fails to specify a police station at that time, he cannot escape the liability from punishment, notwithstanding that he does in fact produce it at a police station within seven days from the date of demand.

English law :—Section 40 of the Road Traffic Act, 1930, which corresponds to this section, runs as follows :—

Requirements as to production of certificate of insurance or of security.

(40).—(1) Any person driving a motor vehicle on a road *shall, on being so required by a police constable, give his name* and address and the name and address of the owner of the vehicle and produce his certificate, and if he fails so to do he shall be guilty of an offence.

Provided that, if the driver of a motor vehicle within five days after the date on which the production of his certificate *was so required produces the certificate in person* at such police station as may have been specified by him at the time its production was required. he shall not be convicted of an offence under this sub-section by reason only of failure to produce his certificate to the constable.

(2) If in any case where, owing to the presence of a motor vehicle on a road, an accident occurs involving personal injury to another person, the driver of the vehicle does not at the time produce his certificate to a police constable or to some person who, having reasonable grounds for so doing, has required its production, the driver shall as soon as possible, and in any case within twenty-four hours of the occur-

rence of the accident, report the accident at a police station or to a police constable and thereupon produce his certificate, and if he fails so to do, he shall be guilty of an offence:

Provided that a person shall not be convicted of an offence under this sub-section by reason only of failure to produce his certificate if, within five days after the occurrence of the accident, he produces the certificate in person at such police station as may be specified by him at the time the accident was reported

(3) It shall be the duty of the owner of a motor vehicle to give such information as he may be required by or on behalf of a chief officer of police to give for the purposes of determining whether the vehicle was or was not being driven in contravention of section thirty-five of this Act on any occasion when the driver was required under this section to produce his certificate, and if the owner fails to do so he shall be guilty of an offence.

(4) In this section the expression "produce his certificate" means produce for examination the relevant certificate of insurance or certificate of security or such other evidence that the vehicle is not or was not being driven in contravention of section thirty-five of this Act as may be prescribed

Production of certificates of insurance on application for authority to use vehicle

107. A Provincial Government may make rules requiring the owner of any motor vehicle when applying whether by payment of a tax or otherwise for authority to use the vehicle in a public place to produce such evidence as may be prescribed by those rules to the effect that either—

(a) on the date when the authority to use the vehicle comes into operation there will be in force the necessary policy of insurance in relation to the use of the vehicle by the applicant or by other persons on his order or with his permission, or

(b) the vehicle is a vehicle to which section 94 does not apply.

officer to demand production of the certificate of insurance. The other changes made are formal or self-explanatory.

Changes made by the Legislative Assembly :—In the proviso to sub section (2) the word "seven" has been substituted for the word "five".

Driving in any public place :—The obligation for production of the certificate of insurance on demand by a police officer in uniform arises only when a person is driving a motor vehicle in any public place It cannot, however, arise when the vehicle is not being driven, nor can it arise when the vehicle is being driven but in any public place.

Proviso to sub-section (1) :—This proviso applies only when a driver, being required to produce the certificate of insurance, fails to produce it but specifies at that time that he will produce it at a particular police station. If the driver fails to specify a police station at that time, he cannot escape the liability from punishment, notwithstanding that he does in fact produce it at a police station within seven days from the date of demand.

English law :—Section 40 of the Road Traffic Act, 1930, which corresponds to this section, runs as follows :—

Requirements as to production of certificate of insurance or of security.

(40).—(1) Any person driving a motor vehicle on a road shall, on being so required by a police constable, give his name and address and the name and address of the owner of the vehicle and produce his certificate, and if he fails so to do he shall be guilty of an offence :

Provided that, if the driver of a motor vehicle within five days after the date on which the production of his certificate was so required produces the certificate in person at such police station as may have been specified by him at the time its production was required he shall not be convicted of an offence under this sub-section by reason only of failure to produce his certificate to the constable.

(2) If in any case where, owing to the presence of a motor vehicle on a road, an accident occurs involving personal injury to another person, the driver of the vehicle does not at the time produce his certificate to a police constable or to some person who, having reasonable grounds for so doing, has required its production, the driver shall as soon as possible, and in any case within twenty-four hours of the occur-

rence of the accident, report the accident at a police station or to a police constable and thereupon produce his certificate, and if he fails so to do, he shall be guilty of an offence:

Provided that a person shall not be convicted of an offence under this sub-section by reason only of failure to produce his certificate if, within five days after the occurrence of the accident, he produces the certificate in person at such police station as may be specified by him at the time the accident was reported.

(3) It shall be the duty of the owner of a motor vehicle to give such information as he may be required by or on behalf of a chief officer of police to give for the purposes of determining whether the vehicle was or was not being driven in contravention of section thirty-five of this Act on any occasion when the driver was required under this section to produce his certificate, and if the owner fails to do so he shall be guilty of an offence.

(4) In this section the expression "produce his certificate" means produce for examination the relevant certificate of insurance or certificate of security or such other evidence that the vehicle is not or was not being driven in contravention of section thirty-five of this Act as may be prescribed

Production of certificates of insurance on application for authority to use vehicle

107. A Provincial Government may make rules requiring the owner of any motor vehicle when applying whether by payment of a tax or otherwise for authority to use the vehicle in a public place to produce such evidence as may be prescribed by those rules to the effect that either—

(a) on the date when the authority to use the vehicle comes into operation there will be in force the necessary policy of insurance in relation to the use of the vehicle by the applicant or by other persons on his order or with his permission, or

(b) the vehicle is a vehicle to which section 94 does not apply.

Notes.

English law :—Section 39 of the Road Traffic Act, 1930, corresponds to this section and runs as follows :—

Production of certificate of insurance or certificate of security on application for motor vehicle licence

39 Provision may be made by regulations under section twelve of the Roads Act, 1920, for requiring a person applying for a licence in respect of a motor vehicle under section *thirteen of the Finance Act, 1920, as amended by any* subsequent enactment, to produce such evidence as may be prescribed that either—

(a) on the date when the licence comes into operation there will be in force the necessary policy of the insurance or the necessary security in relation to the user of the vehicle by the applicant or by other persons on his order or with his permission ; or

(b) the vehicle is a vehicle to which the first section contained in this Part of this Act does not apply at any time when it is being driven by the owner thereof, or by a servant of his in the course of his employment, or is otherwise subject to the control of the owner

Co-operative insurance.

108. (1) A Provincial Government may, on the application of a Co-operative Society of public service vehicle owners registered or deemed to have been registered under the Co-operative Societies Act, 1912, or under an Act of a Provincial Legislature governing the registration of Co-operative Societies and subject to the control of the Registrar of Co-operative Societies of the *province, allow the Society to transact the* business of an insurer for the purposes of this Chapter as if the Society were an authorised insurer, subject to the following conditions, namely :—

(a) the Society shall establish and maintain a fund of not less than twenty-five thousand rupees for the first fifty vehicles or fractional

part thereof and *pro rata* for every additional vehicle in the possession of members of the Society and the said fund shall be lodged in such custody as the Provincial Government may prescribe and shall not be available for meeting claims or other expenses except in the event of the winding up of the Society ;

(b) the liability of the Society shall be limited as specified in clause (b) of sub-section (2) of section 95 ;

(c) the Society shall, if required by the Provincial Government, reinsure against claims above a prescribed amount ;

(d) the provisions of this Chapter, in so far as they relate to the protection of third parties and to the issue and production of certificates, shall apply in respect of any insurance effected by the Society ;

(e) an independent authority not associated with the Society shall be appointed by the Provincial Government to facilitate and assist in the settling of claims against the Society ;

(f) the Society shall operate on an insurance basis, that is to say—

(i) it shall levy its premiums in respect of a period not exceeding twelve months, during which period the insured shall be held covered in respect of all accidents arising,

subject to the limits of liability specified in clause (b) of sub-section (2) of section 95 ;

(ii) it shall charge premiums estimated to be sufficient, having regard to the risks, to meet the capitalised value of all claims arising during the period of cover, together with an adequate charge for expenses attaching to the issue of policies and to the settlement of claims arising thereunder ;

(g) the Society shall furnish to the Superintendent of Insurance the returns required to be furnished by insurers under the provisions of the Insurance Act, 1938, and the Superintendent of Insurance may exercise in respect thereof any of the powers exercisable by him in respect of returns made to him under the said Act ; and

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(h) any provisions of law applicable to the winding up of authorised insurers shall be equally applicable to the Society.

(2) Except as provided in sub-section (1), the Insurance Act, 1938, shall not apply to any Co-operative Society of public service vehicle owners allowed to transact the business of an insurer under this section.

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Notes.

Notes on Clauses :—This is as recommended by the Motor Vehicles Insurance Committee and incorporates the recom-

mendations of the Cassel Committee in respect of mutual indemnity associations.

Changes made by the Select Committee :—The Select Committee revised and clarified the wording of the sub-clauses, without affecting their substance materially.

Changes made by the Legislature :—In part (a) of section (1) the words "first fifty vehicles or fractional part thereof and *pro rata* for every additional vehicle" have been substituted in place of the words "every fifty vehicles or fractional part thereof" in the course of the debates in the Legislative Assembly. This amendment has the effect of providing that the minimum sum of Rs. 25,000/- will be there whether the vehicles be one or fifty and that if there is an additional vehicle over and above this minimum number of fifty, then for every additional vehicle the amount of deposit will increase *pro rata i.e.*, Rs. 500/- per additional vehicle that may be registered. In the same part (a) of sub-section (1), after the word "fund" occurring for the second time, the words "shall be lodged in such custody as the Provincial Government may prescribe and" have been added by the Legislative Assembly.

In sub-section (1) the words "or deemed to have been registered under the Co-operative Societies Act, 1912, or under an Act of a Provincial Legislature governing the registration of Co-operative Societies" have been substituted in place of the word "with," occurring after the words "owners registered," and the word "Credit" was deleted for effecting a drafting improvement, in the course of debates in the Council of State In part (a) of sub-section (1), after the word "for" the word "the" has been added for the same purpose.

Duty to furnish particulars of vehicle involved in accident.

109. A registering authority or the officer in charge of a police station shall, if so required by a person who alleges that he is entitled to claim compensation in respect of an accident arising out of the use of a motor vehicle, or if so required by an insurer, against whom a claim has been made in respect of any motor vehicle, furnish to that person or to that insurer, as the case may be, on payment of the prescribed fee any information at the disposal of the said authority or the said police officer relating

to the identification marks and other particulars of the vehicle and the name and address of the person who was using the vehicle at the time of the accident or was injured by it.

Notes.

Notes on Clauses :—This is as recommended by the Motor Vehicles Insurance Committee and incorporates section 17 of the English Road Traffic Act, 1934.

English law :—The corresponding provision of the English law has been embodied in sub-section (1) of section 17 of the Road Traffic Act, 1934, which runs as follows :—

Provisions as to claims for, and supplementary provisions as to, payments for emergency treatment.

17.—(1) A chief officer of police shall, if so requested by a person who alleges that he is entitled to claim a payment under the last foregoing section, furnish to that person any information at the disposal of the chief officer as to the identification marks of any motor vehicle which that person alleges to be a vehicle out of the use of which the bodily injury arose, and as to the identity and address of the person who was using the vehicle at the time of the event out of which it arose.

(2) A claim for a payment under the foregoing section may be made at the time when the emergency treatment is effected, by oral request to the person who was using the vehicle, and if not so made must be made by request in writing served on him within seven days from the day on which the emergency treatment was effected

(3) A request in writing must be signed by the claimant or, in the case of a hospital, by an executive officer thereof, must state the name and address of the claimant, the circumstances in which the emergency treatment was effected, and that it was first effected by the claimant, or, in the case of a hospital, in the hospital.

(4) A request in writing may be served by delivering it to the person who was using the vehicle, or by sending it in a pre-paid registered letter addressed to him at his usual or last-known address.

(5) A sum payable under the last foregoing section shall be recoverable as if it were a simple contract debt due from the

person who was using the vehicle to the practitioner or the hospital.

(6) A payment made under the last foregoing section to a practitioner or hospital shall operate as a discharge, to the extent of the amount paid, of any liability of the person who was using the vehicle, or of any other person, to pay any sum in respect of the expenses or remuneration of the practitioner or hospital of or for effecting the emergency treatment.

(7) A payment under the last foregoing section shall not be deemed to be a payment by an authorised insurer or owner for the purposes of sub-section (2) of section thirty-six of the principal Act.

110. A Provincial Government may, by notification in the official Gazette, appoint a person or a body of persons to investigate and report on accidents involving the death of or bodily injury to any person arising out of the use of motor vehicles and the extent to which their claims to compensation have been satisfied and to advise and assist such persons or their representatives in presenting their claims for compensation : Power to appoint persons to investigate and report on accidents.

Provided that nothing in this section shall confer on any such person or body of persons the right to adjudicate in any way on the liability of the insurer or on the amount of damages to be awarded except at the express desire of the insurer concerned.

Notes.

Notes on Clauses :—This, as drafted, will enable Provincial Governments to take such action as they deem fit to ascertain that the purposes of this part of the Act are being generally fulfilled. Judicious action under this clause would lead to insurers relying on an authority of this nature for an unbiassed verdict as to their liability, and to a decrease in law suits.

Changes made by the Select Committee :—The Select Committee omitted this section which gives powers to set up

machinery for assisting third parties in presenting claims but inserted in the rule-making section 111 (old 110) adequate provision in place of the section omitted.

The Select Committee omitted clause 109 of the Bill as a consequence of its omission in section 94 (2) [old 92 (2)] of the provision for the making of deposits.

Changes made by the Legislative Assembly:—This section, which was omitted by the Select Committee, was inserted in the course of the debates in the Legislative Assembly as it was thought better to provide it in the Act itself instead of leaving it to the rule-making power of the Central Government.

Power to make rules.

111. (1) The Central Government may make rules for the purpose of carrying into effect the provisions of this Chapter.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the forms to be used for the purposes of this Chapter ;

(b) the making of applications for and the issue of certificates of insurance ;

(c) the issue of duplicates to replace certificates of insurance lost or destroyed ;

(d) the custody, production, cancellation and surrender of certificates of insurance ;

(e) the records to be maintained by insurers of policies of insurance issued under this Chapter ;

(f) the identification by certificates or otherwise of persons or vehicles

exempted from the provisions of this Chapter ;

(g) the furnishing of information respecting policies of insurance by insurers ;

(h) the carrying into effect of the provisions of section 108 ;

(i) adapting the provisions of this Chapter to vehicles brought into British India by persons making only a temporary stay therein by applying those provisions with prescribed modification ; and

(j) any other matter which is to be or may be prescribed.

Notes

Changes made by the Legislative Assembly :—Part (h) of sub-clause (2), as drafted by the Select Committee, was omitted in consequence of insertion of section 110 by the Legislative Assembly.

CHAPTER IX.

Offences, Penalties and Procedure.

General provision for punishment of offences.

112. Whoever contravenes any provision of this Act or of any rule made thereunder shall, if no other penalty is provided for the offence, be punishable with fine which may extend to twenty rupees, or, if having been previously convicted of any offence under this Act he is again convicted of an offence under this Act, with fine which may extend to one hundred rupees.

Notes.

Changes made by the Select Committee :—The Select Committee reduced the penalty from rupees one hundred and rupees five hundred to rupees fifty and rupees two hundred fifty respectively.

Changes made by the Legislative Assembly :—In the course of the debates in the Legislative Assembly the words "twenty rupees" were substituted in place of the words "fifty rupees" and the words "one hundred rupees" in place of the words "two hundred and fifty rupees."

Old law :—This section corresponds to section 16 of Act VIII of 1914 which runs as follows :—

16. Whoever contravenes any of the provisions of this Act or of any rule made thereunder shall, if no other penalty is elsewhere provided in this Act for such contravention, be punishable with fine which may extend to one hundred rupees, and, in the event of such person having been previously convicted of an offence under this Act or any rule made thereunder, with fine which may extend to two hundred rupees.

Analysis of the section :—This section provides for the punishment for offences under the Motor Vehicles Act and under the rules made thereunder. The fine in the case of first offence is rupees twenty and with previous conviction the fine might be extended to rupees one hundred.

Sec. 16 of Act VIII of 1911, is a penalty clause and prescribes the penalties which may be inflicted upon any body who

contravenes any of the provisions of the Act or any rule under the Act. The sooner the authorities abandon the practice of prosecuting motorists, or indeed any other people, under sections which do not describe an offence at all, the better. *Emperor* v. *Rananjai Singh*, 29 Cr L. J. 357 (358) = 108 I. C. 203 = 26 A L J. 331 = A. I. R. 1928 All 261.

English law.—The following sections of the Road Traffic Act, 1930 (20 and 21 Geo 5 Ch. 43), as amended by the Road Traffic Act, 1934 (24 and 25 Geo. 5. Ch. 50), provide for the punishment of offences under that Act:

10 (1) It shall not be lawful for any person to drive a motor vehicle of any class or description on a road at a speed greater than the speed specified in the First Schedule to this Act as the maximum speed in relation to a vehicle of that class or description. Rate of Speed

(1A) A person convicted of driving a motor vehicle on a road at a speed exceeding a speed limit imposed by or under any enactment shall in respect of that offence be liable on summary conviction to a fine not exceeding twenty pounds, and in the case of a second or subsequent conviction to a fine not exceeding fifty pounds.

The provisions of this sub-section shall have effect in substitution for any provision made by or under any other enactment relating to a speed limit for determining the punishment by way of fine or inprisonment to which a person convicted of driving a motor vehicle as aforesaid is to be liable in respect of that offence.

(2) A first or second conviction for driving a motor vehicle on a road at a speed exceeding a speed limit imposed by or under any enactment shall not render the person convicted liable to be disqualified for holding or obtaining a licence.

(3) A person prosecuted for driving a motor vehicle on a road at a speed exceeding a speed limit imposed by or under any enactment shall not be liable to be convicted solely on the evidence of one witness to the effect that in the opinion of the witness the person prosecuted was driving the vehicle at a speed exceeding that limit.

(4) The Minister may by regulation vary, subject to such

conditions as may be specified in the regulation, the provisions of the First Schedule to this Act provided that—

(a) the Minister shall not have power by regulation under this sub-section to vary the speed limit imposed on motor vehicles by section one of the Road Traffic Act, 1934, as respects the driving thereof on a road in a built up area, or to impose on motor vehicles, in the case of which no speed limit is provided by the First Schedule to that Act, any speed limit as respects the driving thereof on a road not in a built up area ; and

(b) a regulation under this sub-section shall be of no effect unless and until it has been approved by a resolution passed by each House of Parliament.

(5) If any person is convicted under section five of the Summary Jurisdiction Act, 1848, of aiding, abetting, counselling or procuring any person who is employed by him to *drive, or is subject to his orders in driving, a motor vehicle* on a road to commit an offence under this section, he shall, instead of being liable on being so convicted to the same punishment as the principal offender, be liable in the case of a first conviction to a fine not exceeding fifty pounds, and in the case of a second or subsequent conviction, to a fine not exceeding one hundred pounds, or to imprisonment for a term not exceeding three months, or to both such fine and imprisonment, and if any person is convicted summarily of the offence of inciting to commit an offence under this section, he shall, notwithstanding anything in proviso (c) to sub-section (1) of section twenty-four of the Criminal Justice Act, 1925, be liable to the same punishment as if he had procured the commission of an offence under this section.

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(6) If a person who employs other persons to drive motor vehicles on road publishes or issues any time table or schedule or gives any directions under which any journey or any stage or part of any journey is to be completed within some specified time and it is not practicable in the circumstances of the case for that journey or that stage or part of the journey to be completed in the specified time without an infringement of the provisions of this section, the publication or issue of the said time table or schedule or the giving of the directions may be produced as prima facie evidence that the employer, as the case may be, procured or incited the persons employed by

him to drive the vehicles to commit an offence under this section.

[The references in sub sections (5) and (6) of the said section ten to an offence under the said section, and the reference in sub section (6) thereof to an infringement of the provisions of the said section, shall be deemed to include references to driving a motor vehicle on a road at a speed exceeding a speed limit imposed by or under any enactment. Vide sub-section (5) of section 2 of the Road Traffic Act, 1934]

11. [This section has been quoted under sec. 116 of this Act].

12. (1) If any person drives a motor vehicle on a road without due care and attention or without reasonable consideration for other persons using the road he shall be guilty of an offence. Careless driving.

(2) A first or second conviction for an offence under this section shall not render the offender liable to be disqualified for holding or obtaining a licence for a longer period than, in the case of a first conviction, one month, or, in the case of a second conviction, three months :

Provided that, where within the three years next before the date on which he is convicted for an offence under this section the offender has been convicted for an offence under section eleven of this Act, that conviction shall be treated for the purposes of this sub-section as if it had been a conviction for an offence under this section.

13. (1) Any person who promotes or takes part in a race or trial of speed between motor vehicles on a public highway shall be liable to imprisonment for a term not exceeding three months or to a fine not exceeding fifty pounds, or to both such imprisonment and fine. Prohibition of motor racing and spead trials on high ways.

(2) A person convicted of an offence under this section shall, unless the Court for special reasons thinks fit to order otherwise and without prejudice to the power of the Court to order a longer period of disqualification, be disqualified for a period of twelve months from the date of the conviction for holding or obtaining a licence.

14. (1) If without lawful authority any person drives a motor vehicle on to or upon any common land, moor-land or Prohibition of driving

motor vehicles elsewhere than on roads.

other land of whatsoever description (not being land forming part of a road), or on any road being a bridleway or footway, he shall be guilty of an offence, and shall be liable in the case of a first conviction to a fine not exceeding five pounds, and in the case of a second or subsequent conviction to a fine not exceeding ten pounds :

Provided that—

(a) it shall not be an offence under this section to drive a motor vehicle on any land within fifteen yards of a road, being a road on which a motor vehicle may lawfully be driven, for the purpose only of parking the vehicle on that land ; and

(b) a person shall not be convicted of an offence under this section if he proves to the satisfaction of the Court that the motor vehicle was driven in contravention of this section for the purpose of saving life or extinguishing fire or meeting any other like emergency.

(2) It is hereby declared that nothing in this section prejudices the operation of section one hundred and ninety-three of the Law of Property Act, 1925 (which relates to the rights of the public over commons and waste lands), or of any byelaws applying to any land or affects the law of trespass to land or any right or remedy to which any person may by law be entitled in respect of any such trespass or in particular confers any right to park a vehicle on any land.

Punishment of persons driving motor vehicles under influence of drink or drugs.

15 (1) Any person who when driving or attempting to drive, or when in charge of, a motor vehicle on a road or other public place is under the influence of drink or a drug to such an extent as to be incapable of having proper control of the vehicle, shall be liable—

(a) on summary conviction to a fine not exceeding fifty pounds or to imprisonment for a term not exceeding four months, and in the case of a second or subsequent conviction either to a fine not exceeding one hundred pounds or to such imprisonment as aforesaid or to both such fine and imprisonment ;

(b) on conviction on indictment to imprisonment for a term not exceeding six months or to a fine, or to both such imprisonment and fine.

(2) A person convicted of an offence under this section shall, unless the Court for special reasons thinks fit to order otherwise and without prejudice to the power of the Court to order a longer period of disqualification be disqualified for a period of twelve months from the date of the conviction for holding or obtaining a licence.

(3) A person liable to be charged with an offence under this section shall not be liable to be charged under section twelve of the Licensing Act, 1872, with the offence of being drunk while in charge on a highway or other public place, of a carriage.

(4) A Police constable may arrest without warrant any person committing an offence under this section.

16. (1) It shall not be lawful for more than one person in addition to the driver to be carried on any two-wheeled motor cycle, nor shall it be lawful for any such one person to be so carried otherwise than sitting astride the cycle and on a proper seat securely fixed to the cycle behind the driver's seat. Restrictio[n] on pillion riding.

(2) If any person is carried on any such cycle in contravention of the provisions of this section, the driver of the cycle shall be liable in the case of the first conviction to a fine not exceeding five pounds, and in the case of a second or subsequent conviction to a fine not exceeding ten pounds.

28. [This section has been quoted under sec. 126 of this Act.]

29. (1) If any person otherwise than with lawful authority or reasonable cause takes or retains hold of or gets on to a motor vehicle or trailor while in motion on any road, for the purpose of being drawn or carried, he shall be liable, in the case of a first conviction, to a fine not exceeding five pounds, and in the case of a second or subsequent conviction to a fine not exceeding ten pounds. Restrictio[n] on person[s] being tow[ed] by getting on to or tampering with moto[r] vehicle.

(2) If while a motor vehicle is on a road or on a parking place provided by a local authority any person otherwise than with lawful authority or reasonable cause gets on to the vehicle or tampers with the brake or other part of its mechanism, he shall be guilty of an offence.

Prosecutions and penalties for offences.

113.—(1) Save as otherwise expressly provided, all offences under this Act shall be prosecuted under the Summary Jurisdiction Act.

(2) A person guilty of an offence under this Act for which no special penalty is provided shall be liable in the case of the first offence to a fine not exceeding twenty pounds, and in the case of a second or subsequent conviction, to a fine not exceeding fifty pounds, or to imprisonment for a term not exceeding three months.

(3) Where a driver of a vehicle is alleged to be guilty of an offence under this Act—

(a) the owner of the vehicle shall give such information as he may be required by or on behalf of a chief officer of police to give as to the identity of the driver, and, if he fails to do so, shall be guilty of an offence, unless he shows to the satisfaction of the Court that he did not know and could not with reasonable diligence have ascertained who the driver was; and

(b) any other person shall, if required as aforesaid, give any information which it is in his power to give and which may lead to the identification of the driver, and, if he fails to do so, he shall be guilty of an offence.

Burden of proof :—A plaintiff claiming damages for personal injury in a running down case would have to prove that he was injured, that his injury was due to the defendant's fault and the fact and extent of his loss and damage; hence, unless he succeeds in establishing these matters he must fail. In virtue however of the statute he need only establish the first and the third elements, that is, that he was injured by the defendant and the extent of his damages. If he establishes those *two matters, the onus is removed from him and it is then for* the defendant to establish to the reasonable satisfaction of the jury, that the loss, damage or injury did not arise through the negligence or improper conduct of himself or his servants. This the defendant may do in various ways, as for instance, by satisfactory proof of a latent defect, or by proof that the plaintiff was the author of his own injury; or by proof that the circumstances were such that neither party was to blame because neither party could avoid the other. But the onus which the section places on the defendant is not in law a

shifting or transitory onus. It remains on the defendant until the very end of the case when the question must be determined whether or not the defendant has sufficiently shown that he did not in fact cause the accident by his negligence. If, on the whole of the evidence, the defendant establishes this to the satisfaction of the jury, he will be entitled to judgment, if however the issue is left in doubt or the evidence is balanced, even then defendant will be held liable in virtue of the statutory onus whereas in that event but for the statute the plaintiff would fail because but for the statute the onus would be on him. A *fortiori* the defendant will be held liable, if the evidence actually establishes high negligence. *Winnipeg Electric Co.* v *Jacob Geel*, 1932 A. C 690 = 139 Ind. Cas. 663 : A.I.R. 1932 P. C. 246 (P C)

This is a civil case Section 16 of Act VIII of 1914 (now section 112) deals with criminal cases and as usual the burden of proof lies heavily on the prosecution.

Where there has been a special legislation for a particular type of offence the maximum punishment provided in such special Act for that particular offence may be accepted as an appropriate maximum. Therefore although the rash driving attracts section 279 of the Indian Penal Code, Magistrates should not inflict maximum punishment inasmuch as the offence refers to the neglect of a civil duty and as such the improbability of culpable negligence is possible. *Emperor* v. *Bayne*, 8 Bom. L.R. 414.

Plying in different routes. The permit accorded permission to the owner of the lorry to ply within the district and the roads on which it was permitted to ply was also specified therein. The permit did not, however, specify the maximum number of passengers. The road on which the lorry was driven was not specified in the permit and it was also then carrying a greater number of passengers than could be taken in a lorry. The owner was thereupon convicted for violation of Rules 79 and 81 of the U. P. Motor Vehicles Rules.

It was held that (i) as the maximum number of passengers was not specified in the permit, the conviction for violation of R. 81 was bad ; (ii) the words "within the district" were merely descriptive of the route specifically described and did not justify the lorry being plied in other routes within the

district and that the conviction for violation of R. 81 was correct: *Subhani* v. *Emperor*, 1933 A.L.J. 493=34 Cr. L.J. 620=143 I.C. 582=A.I.R. 1933 All. 465=1933 Cr. C. 806=Ind. Rul. 1933 All. 301.

Rule of one province does not affect motor vehicles of other provinces : In the case of *P. C. Chaudhuri* v. *Crown*, A. I. R. 1930 All. 34, Mr. P. C. Chaudhury, whose motor car was registered outside the United Province, was prosecuted for non-production of the registration certificate to a constable on traffic duty. Under Rule XI of the U. P. Motor Vehicles Act Rules, he was fined Rs. 5/-. The Allahabad High Court held that Rule XI does not apply to Mr. Chaudhuri's car. Rule XI says that the owner of the vehicle in respect of which a certificate of registration has been issued shall be bound to produce the certificate when so required by the Registering Authority. The High Court further held that there was nothing in the wording of this Rule to show that it applies to cars registered outside U. P. inasmuch as the Registering Authority has been defined in Rule 3 to be one which had registered the car in question.

Royal Mail Service :—There is nothing in the Motor Vehicles Act or in any other legislation by which the bus carrying Royal Mail has been exempted from the operation of the Motor Vehicles Act or Rules made thereunder either in respect of license for drivers or in respect of the restriction regarding the number of passengers to be carried according to the permit. In a case which comes from Bombay a driver used to drive a car carrying Royal Mails between Kolahpur and Ratnagiri. The car was given permit to carry seventeen persons in Kolahpur limits and eight persons in Ratnagiri limits He carried 17 persons from Kolahpur to Ratnagiri and accordingly he was convicted. It was held by the Bombay High Court that the conviction was right and that that the carriage of Royal Mail does not give any protection to the offending driver : *Emperor* vs. *Aba Appa*, 29 Bom. L. R. 191=28 Cr. L. J. 397=100 I. C. 1053=A. I. R 1927 Bom. 154.

Over-loading :—An inspector of motor vehicles reported to the Magistrate that a certain driver of a vehicle overloaded his bus. The Magistrate was Additional District Magistrate in Madras. He held an enquiry and cancelled the licence. It

was held by the Madras High Court that the Magistrate acted illegally, *Soma Sundara's Case*, 2 Mad. Cr. Cases, 55.

According to Rule 41 of the Patna Motor Vehicles Rules, it was held that reckless and negligent driving was not tantamount to over loading, and the trial Magistrate cannot cancel the permit if there was no express rule to that effect, *Sheodatt* v. *Emperor*, A I R. 1929, Pat. 64.

Rule 23 of the Punjab Motor Vehicles Rules, 1931, makes the driver as well as the owner responsible for breach of any rule, provided that the driver knows that the rule has been contravened The rule imposes on the driver the duty of refusing to drive if he knows that a rule is being broken. Accordingly, a lorry driver who carries passengers in excess of those permitted in the licence for the vehicle cannot be acquitted on the mere ground that the driver is not responsible in the presence of checker and ticket seller, *Emperor* v. *Dayal*, 17 Lah 601

Liability of an owner of a vehicle :—In the case of *Varaj Lall* v *King Emperor*, 28 C W. N 854, Greaves, J., delivered the following judgment. The petitioner was the owner of motor lorry No 630. He was prosecuted on the ground that he allowed the driver of the motor lorry to drive it at an excessive speed at 5-30 in the evening of the 24th October last on Lower Circular Road and thereby committed an offence under R. 16 of Part II of the Rules regulating the use of motor vehicles in Calcutta framed under section II of Act No. VIII of 1914 (the Indian Motor Vehicles Act 1914). The petitioner was not in the motor lorry at the time of the alleged offence and had cautioned the driver not to exceed the regulation speed and to drive with due care and caution. The petitioner was convicted on the seventeenth day of January last by the Additional Presidency Magistrate and fined Rs. 15, the driver of the motor lorry admitting that he drove at an excessive speed. The Magistrate in his explanation relies on the provisions of R. 3 of Part II and refers to *Thornton vs. Emperor*, 38 Cal. 415 (1911) = 15 C. W. N. 390 = 9 I. C. 480 = 13 C. L. J. 335 The rule was granted on the ground that the petitioner was not liable under the circumstances. Rule 3 of Part II is, so far as material, as follows: "No person shall drive or have charge or cause or permit to be used, any motor vehicle or trailer which does not in all respects conform to

these rules, or which is so driven or used as to contravene any of these rules." R. 16 of Part II is, so far as material, as follows : "No motor vehicle shall be driven at a greater speed than ten miles an hour, if a heavy motor car, and 8 miles an hour, if the axle weight of any axle of the heavy motor car exceeds six tons or if it draws a trailer."

In the case of *Thornton* vs. *Emperor*, upon which the Magistrate relies the conviction was in respect of an offence under Rule 20 of the Rules then in force framed under Bengal Act III of 1903 which is almost identical with Rule 19 of the present Rules which is as follows :—

"No motor vehicle shall be driven recklessly or negligently or at any speed or in any manner which is likely to endanger human life or to cause hurt or injury to any person or animal or damage to any goods carried in any vehicle or by any person, or which would be otherwise than reasonable or proper with due regard to all the circumstances of the case, including the nature, condition and use of the street or public place and the amount of traffic which is actually on it at the time or which may reasonably be expected to be on it."

R. 4 of those Rules was identical with R. 3 of the present Rules. R 16 by itself, I think, would only make the driver liable as it only contains a prohibition against driving at a greater speed than that stated in the Rule.

R. 3 it is true, prohibits the causing or permitting a motor vehicle to be driven in contravention of R. 16 but apart from authority I do not think that under the circumstances of this case the petitioner can be said to have caused or permitted the motor lorry to be driven in contravention of Rule 16. He was not in the lorry at the time and he had cautioned his driver to observe the Rules.

The general principles of law applicable in cases of this nature are stated in Vol. ix of Halsbury's Laws of England, p. 235 thus "The condition of mind of a servant or agent is not imputed to the master or principal so as to make him criminally liable. A master is not criminally liable merely because his servent or agent commits a negligent or malicious or fraudulent act. But in cases where a particular intent or state of mind is not of the essence of the offence, the acts or defaults of a servant or agent in the ordinary course of his

employment may make the master or principal criminally liable he was not aware of such acts or defaults, and even where they were against his orders."

The principle of what I may call vicarious criminality has been applied in England in cases under the Sale of Food and Drugs Act 1875 and in cases under the Licensing Acts; see *Commissioners of Police vs Cartman*, L R (1896) 1 Q B. 655 referred to in *Thornton vs. Emperor*, 38 Cal. 415 (1911) = 15 C.W N. 300 In that case the licensee was absent when the offence was committed, but there was an express prohibition of the sale of intoxicating liquor to any drunken person and the word "permitting" was not used in the section as regards this particular offence. Similarly in the Sale of Food and Drugs Act, 1875 the prohibition against particular sales are absolute and the word "permitting" does not occur. In *Somerset vs Hart*, L. R. 12 Q B. 360, a case under section 17 of the Licensing Act, 1872 (also cited in *Thornton vs. Emperor*) there was no conviction of the licensee in whose absence gaming took place on the ground that unless he knew and connived he could not be said to have suffered gaming to go on, the word "suffer" appears in the section in question. In *Somerset vs. Wade*, (1894) 1 Q B. 574 a case under sec. 13 of the Licensing Act, 1872, there was no conviction on the ground that there could be no permission if there was no knowledge.

The principle I should adduce from the cases is that where a particular intent or state of mind is not of the essence of an offence a master can be made criminally liable for his servant's acts if an act is expressly prohibited but not otherwise and that he cannot be so made liable if the act provides for liability for permitting and causing a certain thing unless it can be shown that the Act was done with the master's knowledge and assent, express or implied.

In this view of the law I think the petitioner was not liable in the circumstances of this case, having regard to the terms of Rule 3 and I think the conviction and sentence should be set aside and the fine be refunded.

It may be said that we are differing from the view expressed in *Thornton vs. Emperor* and this may be so, but having regard to the fact that that decision was given in respect of the breach of a different Rule framed under a different Act we

do not think it necessary to refer the matter to a Full Bench.

See *Baidya Nath Bose* vs. *King-Emperor*, 42 I.C. 601 = 45 Cal. 430 = 26 C.L.J. 37 = 18 Cr. L. J. 985 = 22 C.W.N. 72, which followed *Thornton* v. *Emp.*, 9 I.C. 480 = 13 C.L.J. 335 = 38 Cal. 415 = 15 C W.N. 390 and *Mahomed Surty* v. *Emp*, 25 Cr. L.J. 196 = 76 I C. 564 = 2 Bur. L J. 201 = 1 Rang. 600 = A.I.R. 1924 Rang. 63 in which same principles, as in *Varaj Lall* vs. *King Emp.*, were laid down. See also notes under sec. 5.

Absent Owner. In the case of *Krishnaswami Iyer*, 20 Cr. L. J. 825 = 53 Ind. Cas. 825 = 26 M L.T. 331 = 10 M.L.W. 399, the petitioner was convicted under Section 16 of the Motor Vehicles Act for having left his car without a light contrary to Rule 16-A of the Madras Motor Vehicles Rules. Rule 16-A states that no person may cause or permit a motor vehicle to stand or be used in a public place between half an hour after sunset or half an hour before sunrise unless it carries lights burning as stated in the Rule. Before the owner of a motor vehicle can be convicted for an offence under this Rule it must be shown that he caused or permitted the car to stand without light burning. As pointed out by the Punjab Chief Court in *Sohan Singh* vs. *Emperor*, 19 Cr.L.J. 928 = 47 P.R 1918 = 47 I C. 444 = 37 P.W.R. (Cr.) 1918 = 15 P.L R 1919, rules cannot apply to an absent owner. There is no evidence that the accused knew that the car had no lights burning or permitted it to stand without lights. The evidence is that he purchased and put oil lights on the car and that his chauffeur was also given carbide. He was not in the car or so near it as to be aware that the lamps were not lighted. The conviction and sentences were set aside.

Master and Servant. In the case of *Nalini Ranjan Sen Gupta* vs. *Corporation of Calcutta*, 52 Cal 953 = 29 C.W.N. 815 Mr. Sen Gupta was held liable for damage caused to a lamp-post by his motor car. It was found by the learned Judge that the car was taken out by a chauffeur, that the cleaner accompanied by him, that the chauffeur stopped the car when he came to a certain place, that he left the car in charge of the cleaner while he went to a shop on business, and while he was absent the cleaner put the car in motion and brought it into collision with the lamp-post. The defendant's statement that the cleaner was employed only to clean the car, and had been forbidden to drive it, has been accepted. It is clear that

the master is not liable merely on the ground that the cleaner was his servant for the reason that driving the car lay outside the scope of the cleaner's employment. The chauffeur was negligent in allowing the cleaner the chance to drive the car, and in taking this view he relies on the decision in the case of *Engelhart* vs *Farrant* (1897) 1 Q. B. 240 The rule stated in that decision is that the master is liable for negligence of the servant if that negligence is an effective cause of the damage. That rule is well established, but in this case, as in that, the difficulty lies in applying the rule to the facts That case, as Lord Esher M. R. remarked was on the border line, and it would, therefore, be dangerous to rely upon inference from similarity. What is necessary in this case is to determine whether the chauffeur was in fact negligent in leaving the car in charge of the cleaner and, if he was, whether that negligence was an effective cause of the accident. A motor car with the engine at rest is a very different thing from a horse drawn van *with the reins attached to a hook,* and a much larger measure of interference is needed to put it in motion. One cannot say that the chauffeur anticipated that the cleaner would try to drive the car It was held that he was not guilty of negligence. See also notes under sec. 5.

Defective Lights. In a prosecution for driving a motor vehicle on a public road with defective lights, time is practically the most important point. In such a case there should be independent and direct evidence (preferably of two persons with separate and accurate time-pieces) indicating exactly the time at which the car has been observed being driven on the public road with defective lights. It is of little practical use for a police officer to come into Court and say "sometime after dusk" or "about 7 p.m." or words to that effect, if it is hoped that such a prosecution is a successfully conducted one : *Allu* vs. *Emperor,* 97 Ind. Cas. 48 = 27 Cr. L. J. 1072 = 7 P.L.T. 512 = A.I.R. 1926 Pat. 416.

Licensed driver driving without license on his body. The case in point is that of *Dhekhlia Aunbi* vs. *Emperor,* 65 Ind. Cas. 425. In that case there is no prohibition against the driving of a motor car by a properly licensed person who has not got his license with him ; it is only the non-production of the license upon demand by a public officer that is an offence. The suspension of a license of a motor driver, if ordered in addition to the imposition of a fine for an offence under the

Suspensio[n] of license.

Act is a part of the sentence, as an order under section 565 of the Criminal Procedure Code is

Appeal against suspension. An order of suspension is appealable under section 407 of the Code of Criminal Procedure; *Emperor* vs. *Jhagroo*, 14 Cr.L J 399=20 Ind.Cas. 214.

Light Whether a vehicle was without light or not is a question of fact It must be proved beyond reasonable doubt: *Aklu* vs *Emperor*, 97 I. C. 48=26 Cr. L. J. 1072=7 P. L. T. 542=A. I. R. 1926 Pat. 446.

Good conduct Certificate. A large number of certificates was produced by an accused who was convicted for bad driving. It was held that the order that he was unfit to hold a license must be cancelled: *Charan Singh* vs. *Emperor*, A. I. R. 1925, All. 799=26 Cr. L. J. 1254=88 I. C. 998=23 A. L. J. 790.

Breach of Motor Vehicles Rules under Act VIII of 1914. A motor driver drove a car under the influence of liquor. He swerved to his right for parking without due warning and cut across a car which came from opposite direction. There was a collision. The accused was charged under Motor Vehicles Rules, Bombay, Rule 27A, and was fined Rs 7. The Crown applied for an enhancement of sentence. It was held by the Bombay High Court, that the breach of the particular rule should ordinarily meet with deterrent punishment because the danger involved in a person driving a motor car when intoxicated is very great; *Emperor* vs. *Rama Deoji*, 30 Bom. L R. 636. In case of breach of Rule 35A of Bombay Motor Vehicles Rules the accused was released under admonition under section 562 Cl. (1) of the Criminal Procedure Code. It was held by the Bombay High Court that the provision of Criminal Procedure Code does not apply: *Emperor* vs. *Pandu Ramji*, 28 Bom. L. R. 297.

The "B" permit granted to the driver is only valid within the district of the Superintendent of Police and if it is driven into another district, it must be countersigned by the Superintendent of the latter district: *Emperor* v *Ramchandra*, 36 Bom. L. R. 366=A. I. R. 1934 Bom. 201=1934 Cr. C. 652=151 I. C. 727=35 Cr. L. J. 1400.

There is no requirement in the Act or Rules that the mirror should be fitted in any particular position. What the Rule

requires is that it should be capable of reflecting traffic approaching from the rear. Where the mirror fitted to a truck is capable of reflecting traffic coming from behind provided the truck is not fully loaded, unless there is a finding that the truck was so heavily loaded that the mirror should not reflect approaching traffic, it would not be enough to constitute an offence under the Act and Rule : *Ramaekers* v. *Emperor*, 38 Cr. L. J. 291 = A. I. R. 1937 Pat. 3 = 18 P. L. T. 62 = 166 I. C. 741.

Motorist from outside British India paying licence on spot—

It is illegal to prosecute a motorist coming from outside British India who makes no attempt to evade payment of British licence fee but offers to pay the entire quarterly tax on the spot and actually pays it to the Magistrate : *In re T. Tirumalai Mudaliar*, A. I R. 1938 Mad 128 = 46 M. L. W. 729 = 1937 M. W. N. 1195 = 1937 M. Cr. C. 391.

In cases where peculiar powers are exercised by officials against private persons technicalities are of importance and their observance is to be insisted upon. The Superintendent of Police fixed a week for the inspection of the lorries. The Inspector however fixed a particular date within the week for the inspection. The lorry driver failed to produce his lorry on that particular date but produced it on a subsequent date within the week fixed by the Superintendent of Police. It was held that under R. 49 of Punjab Motor Vehicles Rules, only Superintendent of Police was authorised to fix dates. The particular date on which the driver failed to produce his lorry was not fixed by the Superintendent and there was no proof of delegation of this power of the Superintendent to the Inspector. The driver, having produced his lorry during the week fixed by the Superintendent, could not be convicted : *Brahm Nath* v. *Emperor*, 38 Cr L. J. 762 = A I. R. 1937 Lah. 23 = 39 P. L. R. 130 = 169 I. C. 462.

Rule 21, Bombay Motor Vehicles Rules, is not *ultra vires* of the Local Government. It comes properly within the terms of cl. (i) of section, 11 (2) of the Motor Vehicles Act (viii of 1914). When Rule 21 speaks of a specified class or classes of motor vehicles, what is meant obviously is specified by the authority who is given power to prohibit, that is to say, the Commissioner of Police or the District Magistrate as the case may be.

Further there is no reason why the authority should not specify and prohibit motor vehicles carrying a load above a certain weight. *Emp.* v. *Vinayak Mahadev Habbu,* 40 Cr. L. J. 111 = 178 I. C. 599 = A. I. R. 1938 Bom. 506 = 40 Bom. L. R. 1099 = I. L. R. 1939 Bom. 19.

Unless the wording of the rules is beyond doubt, the manufacturer's specifications cannot be read as part of the rules made by the Punjab Government When the rule-making authority has deliberately made a distinction between private lorries and public lorries, and has specified that public lorries shall not carry more than a specified amount of weight, it is reasonable to assume that it was not intended that any such limitation should apply to vehicles which are not public motor vehicles. An owner of a private lorry carrying a load in excess of its carrying capacity cannot, therefore, be convicted under rule 23 of the Punjab Motor Vehicles Rules read with sec. 16, Motor Vehicles Act, 1914 *Gurandilla* v. *Emp*, 39 Cr. L. J. 970 = 177 I C. 975 = A. I. R. 1938 Lah. 691 = 40 P. L. R. 942.

Rule 61 requires only that there shall be one man besides the driver for the purpose of dealing with and competent to deal with all matters that are unconnected with the actual driving of the bus. A cleaner whose duties are to put luggage on the bus, to unload the luggage, put water in the radiator and start the bus by turning the starting handle, is not an attendant for the purposes of the aforesaid rule as the driver is still left with other duties to perform with regard, for example, to the issuing of tickets and the giving of information to the passengers. The rule was, therefore, contravened by the owner when there was none in the bus except such a cleaner. *S. N. Ganguly* v. *Emp.*, A. I. R. 1936 Pat. 172 = 37 Cr. L. J. 469 = 161 I. C. 703 = 17 P. L. T. 162 = 1936 Cr. C. 256 = 1936 P. W. N. 147.

Miscellaneous :—In the case of *Khodabux* v. *Emperor*, 97 I. C. 973 it was held that a Chief Presidency Magistrate has jurisdiction to try an offence committed in any place within the Presidency Town. He has further power under rule 3 of the Rules framed under section 21 Cr. P. C to direct that any particular class of cases may be brought before him for trial to prevent pressure of work in other courts. In determining whether the manner of driving a motor car was dangerous to the public or not regard must be had to all the circumstances of the case and the amount of traffic which actually was at the

time in the place. It is really a question of fact depending on the circumstances of the case and the amount of traffic which actually was at the time in the place. Sub-sec. (1) of section 22 of the City of Bombay Police Act, 1902, which entitled the driver of a vehicle intending to pull up to do so at the extreme side of the street along which he is proceeding does not justify overtaking cars which were going slowly. The mere fact of deviating from a line of traffic does not necessarily amount to negligently, recklessly or dangerously driving a car.

113. Whoever wilfully disobeys any direction lawfully given by any person or authority empowered under this Act to give such direction, or obstructs any person or authority in the discharge of any functions which such person or authority is required or empowered under this Act to discharge, or, being required by or under this Act to supply any information, withholds such information or gives information which he knows to be false or which he does not believe to be true, shall, if no other penalty is provided for the offence, be punishable with fine which may extend to two hundred rupees.

Notes.

Changes made by the Legislative Assembly:—The word "wilfully" was inserted in this section in the course of the debates in the Legislative Assembly to make it clear that wilful disobedience was only punishable under this section.

114. Whoever, being disqualified under this Act for holding or obtaining licence, drives a motor vehicle in a public place or applies for or obtains a licence or, not being entitled to have a licence issued to him free of endorsement, applies for or obtains a
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a licence such as is referred to in sub-section (2) of section 9, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to two hundred and fifty rupees, or with both, and any licence so obtained by him shall be of no effect.

Notes.

Changes made by the Select Committee :—The Select Committee has inserted words specifically including the improper use in British India of a licence obtained elsewhere, while the holder is disqualified in British India. It has also reduced the amount of fine from five hundred rupees to two hundred and fifty rupees

Changes made by the Legislative Assembly :—Driving a motor vehicle in a public place when disqualified for driving is one of the serious offences which was not covered by a specific provision and included in the general penal section 112. The Legislative Assembly inserted the words "drives a motor vehicle in a public place or" in this section with a view to make specific provision for this offence.

Driving at excessive speed.

115. (1) Whoever drives a motor vehicle in contravention of section 71 shall be punishable with fine which may extend to one hundred rupees.

(2) Whoever causes any person who is employed by him or is subject to his control in driving to drive a motor vehicle in contravention of section 71 shall be punishable with fine which may extend to two hundred rupees.

(3) No person shall be convicted of an offence punishable under sub-section (1) solely on the evidence of one witness to the effect that in the opinion of the witness such person was driving at a speed which was unlawful, unless that opinion is shown to be

based on an estimate obtained by the use of some mechanical timing device.

(4) The publication of a time table under which, or the giving of any direction that, any journey or part of a journey is to be completed within a specified time shall, if in the opinion of the Court it is not practicable in the circumstances of the case for that journey or part of a journey to be completed in the specified time without infringing the provisions of section 71, be *prima facie* evidence that the person who published the time table or gave the direction has committed an offence punishable under sub-section (2).

Notes.

Changes made by the Select Committee :—The two changes made are drafting improvements.

In clause 115 of the Bill a provision was made for penalising careless driving. The Select Committee omitted this clause. It considered its terms too wide and regarded as misguided the attempt to instil road-courtesy by coercion.

Changes made by the Legislative Assembly :—The Legislative Assembly reduced the fine of two hundred rupees to one hundred rupees as provided for in sub-section (1).

English Law :—Section 10 of the Road Traffic Act, 1930, as amended by section 2 of the Road Traffic Act, 1934, corresponds to this section and has been quoted in Notes under sec. 112.

Solely on the evidence of one witness :—This sub-section does not require a conviction to be based on the evidence of more than one witness, but what is intended is that the *opinion-evidence of a single witness, when the conviction is* based solely on it, must be shown to be based on an estimate obtained by the use of some mechanical timing device. *Vide Plancq* v. *Marks*, (1906) 70 J. P. 216=94 L. T. 577 in this connection.

Sub-section (4) :—This sub-section has been drafted on the lines of sub-section (6) of section 10 of the Road Traffic Act, 1930, which gives statutory sanction to the decision in *Newman v. Overington, Harris and Ash* (1928), 93 J. P. 46=27 L. G. R. 85.

Driving recklessly *or dangerously.*

116. Whoever drives a motor vehicle at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case including the nature, condition and use of the place where the vehicle is driven and the amount of traffic which actually is at the time or which might reasonably be expected to be in the place, shall be punishable on a first conviction for the offence with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, and for a subsequent offence if committed within three years of the commission of a previous similar offence with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

Notes.

Changes made by the Select Committee :—The Select Committee has extended the scope of the section by omitting the words "in a public place." It considers that dangerous driving anywhere should be punishable. It has also omitted the word "recklessly" with the intention of confining the section to the clear case where danger is or is likely to be caused to the public. It has provided here and in other offences where an enhanced penalty is provided for a subsequent conviction that the conviction must be within three years of a previous conviction.

Consequent on the omission of the word "recklessly" from the body of the section, the word "recklessly" should also have been omitted from the marginal note which, as it stands now, seems to be misleading.

Old law:—This section corresponds to section 5 of Act VIII, 1914, which included reckless or negligent driving. This section is quoted below under the heading "Section 5, Act VIII of 1914."

English law :—This section is substantially a reproduction of sub-sec. (1) of sec. 11 of the Road Traffic Act, 1930, (20 and 21 Geo 5, c 43), as amended by section 4 of the Road Traffic Act, 1934 (24 and 25 Geo 5. ch. 50), which runs as follows :—

Reckless or dangerous driving.

11.—(1) If any person drives a motor vehicle on a road recklessly, or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition, and use of the road, and the amount of traffic which is actually at the time, or which might reasonably be expected to be, on the road, he shall be liable—

(a) on summary conviction to a fine not exceeding fifty pounds or to imprisonment for a term not exceeding four months, and in the case of a second or subsequent conviction either to a fine not exceeding one hundred pounds or to such imprisonment as aforesaid or to both such fine and imprisonment ;

(b) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine, or to both such imprisonment and fine.

(2) The Court shall order particulars of any such conviction to be endorsed on any licence held by the person convicted.

(3) On a second or subsequent conviction under this section the convicting court shall exercise the power conferred by this Part of this Act of ordering that the offender shall be disqualified for holding or obtaining a license unless the court, having regard to the lapse of time since the date of the previous or last previous conviction or for any other special reason thinks fit to order otherwise, but this provision shall not be construed as affecting the right of the court to exercise the power aforesaid on a first conviction.

(4) When a person is convicted of aiding, abetting, counselling or procuring, or inciting the commission of an offence under this section, and it is proved that he was present in the vehicle at the time of the commission of the offence, the

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(4) When a person is convicted of aiding, abetting, counselling or procuring, or inciting the commission of an offence under this section, and it is proved that he was present in the vehicle at the time of the commission of the offence, the

offence of which he is convicted shall, for the purpose of the *provisions of this Part of this Act* relating to disqualification for holding or obtaining licences, be deemed to be an offence in connection with the driving of a motor vehicle.

Scope :—Section 5 of Act VIII of 1914 seems rather to refer to a person who is driving a car in a manner which would in ordinary circumstances be proper, but which is improper owing to the special condition of the road at the time he is riding on it It does not cover the case where a man is not on the right side of the road which is always and in every condition improper. Section 279 I.P.C. applies to such a case. *Yar Mahomed* v. *Emp*, 26 Cr L J. 253=84 I.C. 253=16 S L. R. 147. Section 5 of Act VIII of 1914 deals with reckless driving dangerous to the public having regard to all the circumstances of the case. Section 279 I.P.C., refers to driving in a manner so rash or negligent as to endanger human life or to be likely to cause hurt to any other person. The difference between these two sections seems to be this. A man may drive a motor vehicle in a manner "dangerous to the public' even if there is no person actually on the spot to be endangered, the public being regarded as some kind of an all-pervading presence which may reasonably be expected to be at the place at the time. For instance, if a man drives out of a side-road and dashes across a main road into another side-road at 60 miles an hour, he may not endanger any person at all because there happened at the moment to be nobody there to be endangered, but he is certainly driving in a manner dangerous to the public having regard to the amount of traffic which may reasonably be expected to be there. Still his offence cannot come under section 279 I.P C., because there is not "any other person" who is likely to be hurt. For an offence under section 279, there must definitely be some other person to be endangered. So if in driving across the main road in this manner some passer-by only save his life by a wild leap to safety, then the driver of the vehicle is driving in a manner so rash and negligent as at least to be likely to cause hurt to that person who only saved his life by his agility and an offence under section 279 has been committed. *The King* v. *Maung Thoung Shwe*, 39 Cr. L. J. 612 (615)=175 I. C. 639=A.I.R. 1938 Rang. 161 ; *Mahomed Jamal* v. *Emp.*, 30 Cr. L. J. 1077=119 I. C. 536=A.I R. 1930 Sind 61=Ind. Rul. 1929 Sind 216. These observations apply, with equal force, to the present section. But see also *Charan Singh* v. *Emp.*, 26 Cr. L. J.

1254 (1255) = 88 I C. 998 = 23 A.L.J. 790 = A. I. R 1925 All. 798, where such a line of distinction has not been drawn and it has been laid down that the facts which have to be proved in both cases are substantially the same and the offence alleged comes equally well under either definition. These observations do not seem to apply to the present section in which, unlike in section 5 of Act VIII of 1914, the words "recklessly or negligently" do not find place.

The words "any other person" in section 279 I P.C, are very wide, and are not distinctly limited to persons on a road as distinct from the occupants of the particular vehicle which is being rashly or negligently driven. They are wide enough to include the occupants of the vehicle itself, and it may be reasonably held that the occupants of a motor bus have as such right to be protected against rash or negligent driving on the part of the driver of the bus as other people on the road. *Ejaz Ahmad* v *Emp.*, 36 Cr. L.J. 1352 (1353) = 158 I. C. 305 = 1935 C W N 1026 = 1935 C L R 573 = A I.R 1936 Oudh 143

Comparison of section 304A with sections 279 and 338 I.P C which refer to rash or negligent act .—

Section 279 I.P C, runs as follows ·

Rash driving or riding on a public way

Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both

Section 304-A, I.P C, runs as follows :

Causing death by negligence.

Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Section 336 I P C., runs as follows :—

Act endangering life or personal safety of others.

Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to hundred and fifty rupees, or with both.

Section 337 I.P.C., runs as follows :—

Causing hurt by act endangering life or personal safety of others.

Whoever causes hurt to any person by doing an act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Section 338 I P.C., *runs as follows* :—

Causing grievous hurt by an act endangering life or personal safety of others.

Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

Sections 279 and 338 are co-relative with section 304A. Section 279 applied to the driving of any vehicle or riding on any public way in a manner so rash or negligent as to endanger human life or to be likely to cause hurt or injury to any person where no hurt has actually been caused. Section 338 applied to a case where grievous hurt has been caused to any person by an act being done so rashly or negligently as to endanger human life or the personal safety of others. This section is more general than section 279 and embraces not only the act of driving or riding but all acts which endanger human life or personal safety. Section 304A while as general as section 338, is restricted to cases where death has been caused. The rash or negligent act referred to in that section means the act which is the immediate cause of death and not any act or omission which can at best be said to be a remote cause of death. The words "not amounting to culpable homicide" clearly show that what was intended was an act which had directly caused the death of a person. Now, section 279 says "Whoever drives any vehicle or rides on any public way in a manner so rash or negligent as to endanger human life ......" showing clearly that it is the rash or negligent manner of driving or riding which can constitute an offence under that section. Similarly section 338 refers to grievous hurt being caused by the doing of any act "so rashly or negligently" as to endanger human life or the personal safety of others. This also shows that grievous hurt must be the direct result of the act which is rash or negligent and not a remote result of such an act. *Emp. v. Akbar Ali,* 37 Cr. L.J. 975 = 161 I.C. 333 =

1936 O. W. N. 720 = 1936 O L.R. 484 = A.I R. 1936 Oudh 400 = 1936 Cr C. 1083, following, *Emp.*, v. *Omkar Ram Pratap*, 4 Bom. L.R. 679 and *Emp* v. *Sat Narain Pandey*, 55 All. 263 = 145 I.C. 612 = A.I.R. 1933 All. 232 = 1933 A L.J 205 = 1933 Cr. C. 389 = 34 Cr. L J. 1013. It should be noted in this connection that the only difference between sections 337 and 338 I.P.C., is that while the former refers to a case of simple hurt the latter applies to a case of grievous hurt

Section 279 I. P. C. makes rash driving or riding on a public road punishable if such rash driving or riding endangers human life or is likely to cause hurt or injury to any other person. Where the rash or negligent driving actually results in grievous hurt being caused to any person, an offence under s. 338 is committed. The imposition of separate sentences under these two sections is, however, justified because the acts constituting these two offences form part of the same transaction against the same accused. *Ragho Prasad* v. *Emp*, 40 Cr. L J. 759, 183 I. C. 224, A. I. R. 1939 Pat 388, 20 P. L. T. 403, 1939 P W. N. 330.

Besides owing a duty to any other user of the public highway, the owner or driver of a vehicle owes duties to the state, and a breach of any such duty amounts to the commission of a crime. If a person drove a vehicle on the public highway so as to run over and kill another, and if he saw or had timely notice of the probable mischief, and yet wilfully drove on, it would be murder. Or, if such person deliberately drove furiously in amongst a crowd, killed some one, the act would amount to murder. But if the wrongful act amounted to negligence, however gross, the homicide would not amount to murder. The other class of penal offences is reckless or dangerous driving. It is not necessary to give illustrations of how a man may be driving with due care and attention and yet driving without reasonable consideration for other persons, but, if a person may do one without the other, it follows as a matter of law that an information which charges him in the alternative, is bad. It is an elementary principle that an information must not charge offences in the alternative since the defendant cannot then know with precision with what he is charged and of what he is convicted, and may be prevented on a future occasion from pleading autrefois convict: *Exparte Withrick* (1932) 1 K.B. 450.

Speed :—It is notoriously difficult to estimate the speed of

a car when the only source of observation is the car as it passes in the dark. When the witness says that the collision took place after the car had passed him, he should be asked how long after the car passed him he heard the crash. Another method of ascertaining the speed of the car is what was the distance in which the car pulled up from the time the brakes were applied. *W. K. Wesley* v. *Emp.*, 40 Cr. L J. 4 = 178 I. C. 183 = A I.R. 1938 All. 571.

There was a lorry stationary by the road side behind which were people engaged in loading hounds, some of whom were nervous and some were already in the lorry and some were in the process of being put in. In view of this, signals were made to the applicant to slow down. He disregarded these signals and went past the lorry at a rate which must have been considerable seeing that he could not pull up in less than 15 yards and then only with such violent application of the brakes as to result in a skid. Travelling at such a pace passing a stationary lorry, where it had been indicated to him that he must drive with the greatest caution, cannot be called other than reckless driving or at a speed which was dangerous to the public. *W. C. Dutt* v. *Emp.*, 34 Cr. L J. 1260 (1262) = 146 I.C. 208 = A.I.R 1933 Nag. 177 = 1930 Cr. C. 690.

It does not appear that, on a straight and open road, a speed of thirty miles an hour for a motor car is a speed which can necessarily and of itself be described as an excessive or rash speed. *Ram Sewak* v. *Emp.* 34 Cr. L.J. 1154 (1155) = 146 I.C 23 = 10 O.W.N. 823 = 1933 Cr. C. 1275 = A.I.R. 1933 Oudh 391. Twenty five miles an hour is not an excessive pace at which to pass another vehicle on an open road *Emp.* v. *Homnarain Sukhailal Kachhi*, 35 Cr. L. J. 696 (698) = 148 I.C. 541 = 1934 Cr. C. 272 = A.I.R. 1934 Nag. 65 = 30 N L.R. 317; *S Ganguli* v. *Emp*, 30 Cr. L J. 539 = 111 I.C. 900 = A.I.R. 1929 Rang. 14 = Ind Rul. 1929 Rang. 132. A speed of about 20-25 miles an hour cannot be said to argue *ipso facto* that there was negligence. *Nga Ohn Saing* v. *The King*, 40 Cr. L. J. 701 = 182 I. C. 509, A.I.R. 1939 Rang. 209. A speed of 40 miles an hour may seem very fast to on-lookers, and while no doubt in certain circumstances, it is a reckless speed, it may not be, taking all the facts into consideration, an excessively reckless speed *Maung Tun Khin* v. *The King*, 39 Cr. L.J. 535 (536) = 175 I.C. 133 = A.I.R. 1938 Rang 97.

In a manner which is dangerous to the public :—

In determining whether the manner of driving was dangerous to the public or not regard must be had to all the circumstances of the case and the amount of traffic which actually was at the time in the place. This is really a question of fact under the circumstances. *Khoda Bux* v. *Emp.*, 27 Cr. L J. 1213 (1214)=97 I.C. 973=28 Bom. L R 1066= A.I.R. 1926 Bom. 564.

Where the defendant is prosecuted for dangerous driving the Court is entitled to admit evidence as to speed, and to take this evidence into consideration in arriving at a decision. *Hargreaves* v. *Baldwin* (1905), 93 L T. 311=69 J. P. 37. In *Beresford* v. *Richardson*, (1921) 1 K. B. 243 a conviction was upheld although the only evidence in support of a charge of dangerous driving was evidence as to dangerous speed.

The evidence of dangerous driving some distance from the scene of a collision in which the car was involved is relevant and should be admitted. *Hallett* v *Warren* (1926), 93 J. P. 225=27 L.G R 773.

There is no necessity to prove the presence of passengers on the highway *Mayhew* v. *Sutton* (1901) 71 L. J. K. B 46=86 L T. 18

Rashness or negligence :—A rash act is primarily an overhasty act and is thus opposed to a deliberate act, but it also includes an act which though it may be said to be deliberate, is yet done without due deliberation and caution · Per Hosking J. C. in *Nga Myat Thin*, (1918) P.J.L.B 426. The term "rash act" connotes the want of proper care and caution ; in other words, it means an overhasty act. *Emp* v *Nga San Win*, 35 Cr. L.J 218=147 I.C 60=A. I R 1933 Rang. 326= 1933 Cr. C. 1281.

Negligence is a breach of duty caused by an omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do *Blyth* v. *Birmingham Water Works*, (1856) 11 Ex. 781, 781.

If a man is driving along a road, it is his duty not to do that which may injure another person whom he meets on the road, or to his horse or to his carriage. If a man is driving on a Salisbury plain, and no other person is near him, he is at liberty

to drive as fast and as recklessly as he pleases. But if he sees another carriage coming near to him, immedately a duty arises not to drive in such a way as is likely to cause an injury to other carriages. So too, if a man is driving along a road in a town a similar duty not to drive carelessly arises out of contiguity or neighbourhood, Per Lord Esher, M. R. in *Le Lievre v Gould*, (1893) 1 Q.B. 491, 497.

Criminal rashness is hazarding a dangerous or wanton act with the knowledge that it is so and that it may cause injury but without intention to cause injury or knowledge that it will be probably caused. The criminality lies in running the risk of doing such an act with recklessness or indifference as to the consequence. Criminal negligence is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which, having regard to all the circumstances out of which the charge has arisen, it was the imperative duty of the accused person to have adopted *H. W. Smith* v. *Emp*, 27 Cr L. J. 153 (155) =91 I. C. 889=33 C. W. N. 66=A. I. R. 1926 Cal. 300=53 Cal. 333, *F G. Robson* v. *Emp.*, 36 Cr. L. J. 178 (180)=152 I C. 699 =1931 Cr. C. 888=A I.R 1934 Rang. 194.

Under section 279 I P.C., the rashness or negligence shown must be what may fairly be described as criminal rashness or criminal negligence Before an accused can be convicted of an offence under that section, there must be something more than a mere error of judgment or something more than mere carelessness. *Abdul Ghani Nasurullah* v. *Emp*, 39 Cr L.J. 515 =175 I.C. 27=A.I.R. 1938 Sind 86; *Kanji Juma Khoja* v. *Emp.*, 39 Cr. L. J. 566 (568)=175 I. C. 116=A. I. R. 1938 Sind 100; *H.B. Spiers* v. *Johiuddin*, 33 Cr.L.J 549=138 I C. 98= A.I.R 1932 Cal. 461=36 C.W.N. 216=59 Cal. 113=Ind. Rul. 1932 Cal. 419=1932 Cr. C. 451.

It is not always necessarily a rash and negligent act to drive on the wrong side of the road. *Ram Sewak* v. *Emp.*, 31 Cr. L.J. 1154=146 I C. 28=10 C.W N. 823=A.I.R. 1935 Oudh 391 =1923 Cr. C. 1275; *F. G. Robson* v. *Emp*, 36 Cr L.J. 178=152 I.C. 699=1931 Cr. C. 888=A.I R 1934 Rang. 191

A breach of the rule of the road need not necessarily involve rashness or negligence. *Emp.* v. *Jiwa Ram*, 33 Cr. L. J. 309=136 I.C. 571=A I. R. 1932 All. 69=1932 Cr. C. 89=Ind. Rul. 1932 All. 219=1932 A.L.J. 519.

Failure to sound the horn is not necessarily negligence and to sound a horn does not necessarily negative rashness or negligence of driving of course, if the car was being driven at an excessive speed, that in itself would be evidence to show that there was negligence But such a speed as about 20-25 miles an hour cannot be said to argue *ipso facto* that there was negligence. From the mere fact that a motorist strikes a person walking on the road, the presumption cannot be drawn that the accident was caused by the motorist's carelessness. This presumption is ill-founded as a great many such occurrences are due to accidents *Nga Ohn Saing* v *The King*, 40 Cr L J. 701 = 182 I.C. 509 = A.I R. 1939 Rang 209.

In cases of this kind law or usage of the road is not the criterion of negligence. The test is whether the accident could have been avoided by the accused if he had exercised that care and diligence which ordinarily cautious persons using the road in similar circumstances would have done. *Emp* v. *Hommarain Sukhailal Kachhi*, 35 Cr L J 696 (698) = 148 I C 541 = 1934 Cr C 272 = A I. R 1934 Nag 65 = 30 N L.R. 317. But when the accused was negligent in continuing to drive on the wrong side of the road in spite of due warning and in going fast, the case undoubtedly falls within the scope of Sec. 279 I. P. C., which is not only proper but more appropriate. *Emp* v *Jiwa Ram*, 33 Cr. L. J 309 = 136 I C 571 = A I R 1932 All. 69 = 1932 Cr. C. 89 = Ind Rul. 1932 All. 219 = 1932 A.L.J. 519. The wording of Rule 46 of the Burma Motor Vehicle Rules makes it clear that except for reasoanble cause a tram-car must be passed on the left side, the proviso merely allows a special exception to the general rule To pass it, therefore, on the right side is *prima facie* negligence on the part of a driver of a motor vehicle since the sudden appearance of a vehicle from behind a tram-car on the unexpected side is a fruitful source of accident. *Ahmad* v *Emp*, 28 Cr. L.J. 481 = 101 I. C. 660 = A. I R. 1927 Rang. 149 = 6 Bur. L. J 76.

The mere fact that the rickshaw was on its right side when something else ran into it does not prove *ipso facto* that the driver of the car which collided with it was guilty of negligence. It is always possible that accidents may occur for some reason, the road is sometimes greasy, coolies running blindly across the front of a car may cause it to swerve and a thousand and one things may happen. Magistrates trying motoring cases must not judge that negligence must have

been present merely because a car hit something else *Garanand Singh* v. *Emp*, 35 Cr. L.J. 116 (118) = 146 I.C. 545 = A.I.R. 1933 Rang. 329 = 1933 Cr. C. 1146

To overload a lorry may no doubt be an offence under the Motor Vehicles Act, but it cannot be regarded as a rash and negligent act within the meaning of Sec. 304A, I. P. C. *Jaimal Singh* v. *Emp*, 33 Cr. L. J. 436 = 137 I C. 262 = Ind. Rul. 1932 Lah. 319 = A. I. R. 1932 Lah. 366 = 33 P L R. 492 = 1932 Cr. C. 481 ; *Kanji Jama Khoja* v. *Emp.*, 39 Cr. L.J. 566 (568) = 175 I.C. 116 = A.I R. 1938 Sind 100.

The mere fact of deviating from a line of traffic does not necessarily amount to negligently, recklessly, or dangerously driving a car. It is a question of fact to be determined on the circumstances of each case. One can deviate the line without having recourse to dangerous driving. Or, one may have recourse to dangerous driving without deviating the traffic line. *Khodabux* v. *Emp*, 27 Cr. L.J. 1213 (1214) = 97 I. C. 973 = 28 Bom. L.R 1066 = A.I.R. 1926 Bom. 564.

See also notes given below under the heading "Reckless driving"

Section 5, Act VIII of 1914 :—Section 5 of Act VIII of 1914 runs as follows : "Whoever drives a motor vehicle in a public place recklessly or negligently, or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the place and the amount of traffic which actually is at the time, or which might be reasonably expected to be, in the place, shall, on conviction, be punishable with fine which may extend to five hundred rupees."

A driver of a car who attempts to force his way past a car in front of him on his side of the road at a time when there is a car approaching on the opposite side of the road in the opposite direction almost immediately in front of his car, is guilty of conduct which comes within the purview of this section. *Charan Sing* v. *Emp.*, 26 Cr. L. J. 1251 = 88 I.C. 998 = 23 A.L.J. 790 = A.I.R. 1925 All. 798.

But where there were two cars going along the road from South to North at something under 20 miles per hour and, while another car came in the opposite direction from North to South, the accused passed the two cars going towards the North at the speed of 25 miles per hour on a road which was

40 to 50 feet wide at the place and would give ample room for 4 cars to pass abreast with any amount of room to spare as there was no traffic of any kind on the road at the time except the 4 cars in question. Held that the accused was not guilty of an offence under sec. 5 of Act VIII of 1914 as no reckless or negligent driving could be assumed in the circumstances of the case, that there would be ample room for a small car, (i e. a Baby Peugeot) like that of the accused to pass without trenching on the right hand side of the road and that, even if he did go slightly over the middle line, the car coming in the opposite direction had 20 ft. in which to swing to its left and it might be expected to do so. *S Ganguli* v. *Emp*, A.I.R. 1929 Rang 14 = 115 I.C. 900 = 30 Cr. L.J. 539 = Ind. Rul. 1929 Rang. 132.

Where the taxi cab was standing on the way and there was no space on the left side for the accused's car to pass and the accused tried to pass by the right side with the result that there was collision on account of the fact that the space on the right side was not sufficiently wide for his car Held that there was nothing but an error of judgment and a conviction under this section could not be sustained *H B Spiers* v. *Johiuddin*, 33 Cr L J. 549 = 138 I. C. 98 = A I R. 1932 Cal. 461 = 36 C. W. N. 246 = 59 Cal 113 = Ind. Rul. 1932 Cal 419 = 1932 Cr C. 451.

Whether a driving is reckless or not depends upon the circumstances of each case. Section 5 of Act VIII of 1914 did not specify the definition of reckless and negligent driving. Where there is nothing to show that at the time, the traffic on the road was such that the speed at which the accused was driving the bus can be considered to be either negligent or reckless, the accused cannot be convicted under this section. Where a person having found that the driver was not willing to stop the bus to pick him up thought that if he went too close to the bus with extended hand, the driver would certainly stop the bus in order to avoid an accident, and if thus he courted an accident, and the driver could not have anticipated that a man who was shouting out to stop the bus would be so reckless as to come so close to the bus as to hurt himself, the action of the driver did not amount to rash or negligent driving. *Muhammad Rafiq* v. *Emp.*, 39 Cr. L.J. 382 = 173 I C 860.

A fine inflicted on an accused should not be excessive, having regard to his pecuniary means. The best way to stop dangerous driving of motor is for the Court, on a conviction

been present merely because a car hit something else *Gar-nand Singh* v. *Emp*, 35 Cr. L.J. 116 (118) = 146 I.C. 545 = A.I. 1933 Rang. 329 = 1933 Cr. C. 1146.

To overload a lorry may no doubt be an offence under th Motor Vehicles Act, but it cannot be regarded as a rash an negligent act within the meaning of Sec. 304A, I. P. C. *Jaim Singh* v *Emp*, 33 Cr. L. J. 436 = 137 I C. 262 = Ind. Rul. 193 Lah. 319 = A. I. R. 1932 Lah. 366 = 33 P.L.R. 492 = 1932 Cr. C 481 ; *Kanji Jama Khoja* v. *Emp.*, 39 Cr. L J. 566 (568) = 175 I.C 116 = A.I R. 1938 Sind 100.

The mere fact of deviating from a line of traffic does no necessarily amount to negligently, recklessly, or dangerousl driving a car. It is a question of fact to be determined on th circumstances of each case One can deviate the line withou having recourse to dangerous driving. Or, one may hav recourse to dangerous driving without deviating the traffi line. *Khodabux* v. *Emp*, 27 Cr. L.J. 1213 (1214) = 97 I. C. 97 = 28 Bom. L R 1066 = A.I R. 1926 Bom. 564.

See also notes given below under the heading "Reckless driving."

Section 5, Act VIII of 1914 :—Section 5 of Act VIII of 1914 runs as follows . "Whoever drives a motor vehicle in a public place recklessly or negligently, or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the place and the amount of traffic which actually is at the time, or which might be reasonably expected to be, in the place, shall, on conviction, be punishable with fine which may extend to five hundred rupees."

A driver of a car who attempts to force his way past a car in front of him on his side of the road at a time when there is a car approaching on the opposite side of the road in the opposite direction almost immediately in front of his car, is guilty of conduct which comes within the purview of this section. *Charan Sing* v. *Emp.*, 26 Cr. L. J. 1251 = 88 I.C. 993 = 23 A.L.J. 790 = A.I.R. 1925 All. 798.

But where there were two cars going along the road from South to North at something under 20 miles per hour and, while another car came in the opposite direction from North to South, the accused passed the two cars going towards the North at the speed of 25 miles per hour on a road which was

40 to 50 feet wide at the place and would give ample room for 4 cars to pass abreast with any amount of room to spare as there was no traffic of any kind on the road at the time except the 4 cars in question. Held that the accused was not guilty of an offence under sec. 5 of Act VIII of 1914 as no reckless or negligent driving could be assumed in the circumstances of the case, that there would be ample room for a small car, (i e. a Baby Peugeot) like that of the accused to pass without trenching on the right hand side of the road and that, even if he did go slightly over the middle line, the car coming in the opposite direction had 20 ft in which to swing to its left and it might be expected to do so. *S Ganguli* v. *Emp.*, A I.R. 1929 Rang 14 = 115 I C. 900 = 30 Cr. L J. 539 = Ind Rul. 1929 Rang 132

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of the offender under sec. 5 of Act VIII of 1914, instead of imposing a fine disproportionate to the pecuniary means of the latter, to exercise its powers under sub-section (2) of section 18 of that Act, and to cause particulars of the conviction to be endorsed on the licence held by the offender and to cancel or suspend the licence, or to declare the offender disqualified for obtaining a licence either permanently or for such period as it thinks fit *Basappa Rachapa Hundekar* v. *Emp*, 26 Cr. L.J. 1536 = 90 I C. 320 = 27 Bom L.R. 1056 = A. I. R. 1925 Bom. 526. But sec. 26 Cr L J. 1254 given below under the heading "Cancellation of Licence."

Section 279 I P C :—The accused was on the wrong side of the road He, however, drove his car slowly, when he saw the complainant's car come from the opposite direction, he put his hand up to give the signal that he was going to turn into the gate. At about this time the complainant was driving his car at an excessive speed in that he drove at the rate of 25 miles per hour and the accident occurred. This accident would not have occurred if the complainant had not been driving his car at an excessive speed. Held that there was no gross and culpable neglect or failure on the part of the accused to exercise that reasonable and proper care to guard against injury either to the public generally or to any individual in particular and that he was not guilty of an offence under this section. *F. G. Robson* v. *Emperor*, 36 Cr. L. J. 178 = 152 I C. 699 = 1931 Cr. C. 888 = A. I R. 1934 Rang. 191.

An *ekka* was being driven by a person who was not licensed and the light of the *ekka* was not burning. The car of the accused and the *ekka* came to a collision at the crossing of two roads. The driver of the *ekka* would have seen from the lights of the car that it was approaching and if the driver had acted with any care whatever, he would have waited until the car had passed the crossing. The collision was caused solely because the *ekka* which had the opportunity of seeing that a vehicle was approaching did not act on that information. The car on the other hand had no knowledge that a vehicle was approaching and it was, therefore, not incumbent on the car driver to do more than he did, that is to approach the crossing at a reasonable speed. The accident was solely due to the *ekka* neglecting these elementary precautions and the accused could not be convicted under section 279 or 337 I. P. C. *W. K. Wesley* v. *Emperor*, 40 Cr. L. J. 4 = 178 I. C. 183 = A. I. R. 1938 All. 571.

The accused started to drive a bus and had gone some way when he gave up his seat to an unlicenced driver and himself sat at the back of the bus. The unlicensed driver continued to drive and upset it, with the result that some of the passengers were injured He was, therefore, convicted under section 279 read with section 107 I P. C Held that the accused certainly aided the unlicensed driver in driving the bus but it could not be said that he intended that it should be driven rashly and negligently and that if he committed an offence, it must be one under the Motor Vehicles Act but not the one with which he was charged *Mahomed Jamal v. Emp*, 30 Cr L J 1077 = 119 I C 536 = A. I. R 1930 Sind 64 = Ind. Rul. 1929 Sind 216. To establish an offence under section 279 read with section 114 I P. C, it is not sufficient to show that the accused must have instigated the driver to drive fast; it must be shown at least that he instigated him to drive at a pace which was in itself, in all the circumstances, so rashly fast as to endanger human life It is unlikely that any passenger in a car would explicitly tell any person to drive in a manner which was dangerous The fact that the accused did not insist on the driver driving at a moderate pace, again, does not show that he instigated his driving at a reckless pace The accused can be convicted of abetement of an offence punishable under sec. 279 I.P C., only if it can be shown that he actually, in so many words, told the driver to drive regardless of what might happen. *Maung Tun Khan v. The King*, 39 Cr. L.J. 535 = 175 I C. 133 = A I R. 1938 Rang 97.

The car of a Pork Inspector of the Rangoon Corporation was chasing another containing illicit pork when the leading car swerved across the road on to the right hand side and crashed with the result that three persons were killed The following car was in no way involved in the crash and drew up a little further along on the right hand side of the road well over a 100 feet from the scene of the crash. Both the cars proceeded along the road at such a pace as to cause alarm, ignored the traffic signals and crossed the junction when the signal was against them. The Pork Inspector had asked his driver to keep the chased car in sight but there was no evidence that he induced the driver to drive so rashly. Held that the driver of the chasing car was rightly convicted under sec. 279 I. P C, as he was driving it at such a speed as was dangerous to life, that the sentence of six months' rigorous imprisonment which the Magistrate inflicted upon

him was not called for in the circumstances of the case as, although he drove at such an inordinate pace, his car was not completely out of control and he always had the leading car acting as a kind of pilot and should be reduced to a fine of Rs. 100 and that the Pork Inspector could not be held guilty under sec. 279/114 I.P.C., for abetment. *Maung Tun Khin* v. *The King*, supra.

In the case of the *Santu Jadhav* v. *Emp.*, 22 Cr. L. J. 321 = 61 I.C. 52, the accused was charged under section 279 I. P. C., with having driven a motor car in such a rash and negligent manner as to endanger human life, having collided with Victoria No. 1 and damaged it. The Magistrate found the accused guilty and sentenced him to two months' rigorous imprisonment. It was held by the Bombay High Court that the driver of a motor car had no business to attempt to pass a car in front of him by going on to the wrong side of the road unless he could see the road in front so absolutely clear of traffic coming from the opposite direction that he could get back again on to the right side of the road without any risk of accident. It is only when the road is so clear that there can be no possible chance of accident that any attempt should be made to pass the car in front of the driver. It was further held that the sentence to be passed in each case after conviction must be left to the Judge or Magistrate who tried the case, and the High Court ought not to interfere in revision unless the sentence was so severe or so lenient that it could be said that a proper discretion had not been exercised.

Every case of collision between a motor car and a pedestrian must be judged on its merits. Frequently the driver of the car is not to blame, but, in any circumstance the Court should be disposed to look severely on a man who, after he has knocked down a foot passenger even without blame attached to him, goes on his way leaving the passenger injured upon the road. Where, therefore, a woman was injured owing to accused's rash and negligent driving at a place where there was ample space for him to have passed the woman and the accused, after having knocked her over, left her where she was, the High Court considered it to be a serious offence and enhanced the sentence of fine of Rs. 20 passed upon him under sections 279/337 I. P. C. by adding to it a sentence of three months' rigorous imprisonment. *Emp.* v. *Aghan*, 28 Cr. L. J. 891 = 101 I. C. 910 = 4 O. W. N. 708 = A.I.R. 1927 Oudh 411.

Sec 338 I P. C :—The accused was driving a motor lorry when a little boy apparently in crossing the road came in contact with the lorry and his left foot was run over and fractured and had to be amputated It was found that the speed was moderate It was also found that the accused was driving on the correct side of the road. There was also indication that the boy was trying to cross the road and that his sister failed to stop him, that he came in contact with the front portion of the lorry and was run over Held that the accused could not, under these circumstances, be convicted under section 338 I P C *Pulin Behary Nandi* v. *Emp.*, 30 Cr. L. J. 402 = 115 I. C. 96 = 32 C. W N. 612 = Ind. Rul. 1929 Cal 320.

Where the accident was due mainly, if not entirely, to the rashness of the accused in driving the motor car while drunk and getting on to the wrong side of the road while there were vehicles in front, or otherwise to his negligence in not seeing the *tonga* in front of him and not properly controlling the motor car so as to avoid a collision with the *tonga* as a result of which a person was thrown out of the *tonga* and broke her collar bone, he was found guilty under sec. 338 I P. C. and was sentenced to a fine of Rs. 100/- only in reduction of a sentence for three months' rigorous imprisonment awarded by the trying Magistrate. *Chaudhuri* v. *Emp*, 35 Cr L J. 296 = 147 I. C. 122 = 10 O. W. N. 1211 = A. I. R. 1933 Oudh 568 = 1933 Cr. C. 1582.

304 A, I P C. :—To impose criminal liability under section 304-A, I. P. C, it is necessary that the death should have been the direct result of a rash and negligent act of the accused, and that the act must be the proximate and efficient cause without the intervention of another's negligence. It must be the *causa causans*; it is not enough that it may have the *causa sine qua non* If on account of the fast driving of the accused the deceased had been by reason of a jerk thrown out of the lorry and killed, or if some pedestrian in the way had been knocked down and killed, the accused could have been legally convicted under sec. 304-A. But where the death of the deceased was due to a collision, in order to impose a criminal liability on the accused it must be found as a fact that collision was entirely or at least mainly due to the act of the accused and in absence of such a finding his conviction cannot stand. *Satnarain Pandey* v. *Emp*, 34 Cr. L. J. 1013 = 145 I. C. 612 = 1933 A. L. J. 205 = A. I. R. 1933 All. 232 = 1933 Cr. C.

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389 = 55 All. 263; *Ram Sewak* v. *Emp.*, 34 Cr. L. J. 1154 = 146 I. C. 28 = 10 O. W. N. 823 = A. I. R. 1933 Oudh 391 = 1933 Cr. C. 1275; *Kunji Juma Khoja* v. *Emp*, 39 Cr. L. J. 566 (567) = 175 I. C. 116 = A. I. R. 1938 Sind 100, *Emp.* v. *Omkar Rampartap*, 4 Bom. L R 679. But see *Emp.* v. *Khan Mahomed Shermahomed*, 38 Cr. L. J. 660 (661) = 168 I. C. 870 = A. I R 1937 Bom 96 = 38 Bom. L. R. 1111 where it has been laid down that it would be very dangerous to attempt to distinguish in cases under sec. 304-A, I. P. C, between the approximate and ultimate cause of death due to a rash and negligent act.

In a case of contributory negligence the crucial question on which liability depended, is whether either party could, by the exercise of reasonable care, have avoided the consequences of the other's negligence, if he could, then that party was legally responsible for the accident. *Deota Misir* v. *Emp.*, 32 Cr. L. J. 1061 = 133 I. C. 601 = 1931 A. L J. 779 = Ind. Rul. 1931 All 713 = A. I. R. 1931 All. 708 = 1931 Cr. C. 1044, following *Swadling* v. *Cooper*, (1929) 46 T. L. R. 73. A driver of a motor vehicle who is himself negligent cannot plead in his defence the negligence of a pedestrian whom he knocked unconscious and killed. The law is propounded in Vol. 9 of Halsbury's Laws of England, Halishan Edition, at page 446, para 700 in these terms :—"If the prisoner's negligent act or omission was the proximate and efficient cause of death, the fact that the deceased was himself negligent and so contributed to the accident or other circumstances by which the death was occasioned does not afford a defence to an indictment for manslaughter." *Mohammad Bux* v. *Emp.*, 36 Cr. L. J. 1368 = 158 I. C. 330 = A. I. R. 1935 Nag. 200 = 1935 Cr. C. 1097 = 31 N. L. R. 26 Sup.; *Kunji Juma Khoja* v. *Emp.*, Supra; *Queen-Emp.* v. *Nand Kishore*, 6 All. 248 = 1884 A. W. N. 71.

But in a prosecution for rash and negligent driving though contributory negligence is no defence entitling the accused to an acquittal, it is yet a fact which should be taken into consideration in determining the sentence. *Kanshi Ram* v. *Emp.*, 28 Cr L J. 351 = 100 I. C. 831 = 28 P. L. R. 99 = A. I. R. 1927 Lah. 165; *Kamdar Ali Serang* v. *Emp.*, 11 I.C. 130 = 15 C.W.N. 835 = 14 C.L.J. 656 = 12 Cr. L.J. 362. In *Kanshi Ram* v. *Emp.*, supra, it has also been held that a person driving a car should always keep it in a state of control sufficient to enable him to avoid running into any passenger who may fail to step off the road, however annoying the dilatoriness of the foot passenger may be to him.

Mere velocity of the vehicle is not the only criterion of rash and negligent driving. It may consist in taking, while driving, risks which by the exercise of a little diligence could have been avoided. Driving the car recklessly until it came so close to the pedestrian that it became impossible to save the collision cannot but be characterised as rash and negligent driving Ordinarily the pedestrians who use the road are not exempt from the duty to take care of themselves, but negligence, if any, on the part of a pedestrian cannot excuse negligence on the part of a driver of such a fast and dangerous vehicle as a motor bus. As between a pedestrian and a driver of a motor vehicle the responsibility of the latter is greater. He has a duty to keep better outlook than a pedestrian. The duty to use care increases in proportion to the danger involved in dealing with the instruments which for a man's own purpose he brings into relations of proximity to his neighbours (see Bevan on Negligence, page 559, Vol. I, 4th edition). In fact as has been remarked by Lord Justice Clerk (Moncreiff) "It lies on the driver to keep clear of foot passengers." The same learned Judge in another case laid down that there is the strongest presumption (of negligence) both in fact and in law against a driver who runs down a person in day-light. (Bevan on Negligence, page 694, Vol. 1). Where the facts show that it was quite possible for the accused to have averted the collision in spite of the (real or assumed) negligence of the deceased pedestrian by leaving a sufficient margin for the man to pass · nevertheless as the collision occurred, the inference is irresistible that it was directly due to the reckless and negligent conduct of the driver of the vehicle In these circumstances a driver of a motor vehicle is culpable even if there is a proof of negligence on the part of the pedestrian and is guilty of an offence under sec 304-A I. P C *Mohammed Bux* v. *Emp*, supra.

The accused, a lorry driver, was driving a lorry loaded with wooden sleepers through the gateway of the compound where they had been stored and from where he was removing them when one of the sleepers projecting over the side of the lorry struck one of the stone pillars of the gateway and knocked it down and the pillar fell upon a barber who was standing behind it, and inflicted injuries upon him wherefrom he died on the night of the same day. The accused had driven the lorry through the gateway five times that afternoon without accident. The lorry was not driven fast. The accused

could not, therefore, be found to be rash or negligent. The rashness or negligence must be such as fairly to be described criminal. The phrase "criminal negligence" as used in ordinary conversation conveys something of the meaning. Mere carelessness is not sufficient. The accused was guilty of an error of judgment and nothing more and could not be convicted under Sec. 304-A, I. P. C. *Kanji Juma Khoja* v. *Emp.*, 39 Cr. L. J. 566 = 175 I. C. 116 = A. I. R. 1938 Sind 100.

The accused was driving a motor lorry and a bullock cart was going ahead of the lorry and so were two women. The driver tried to pass the cart to the right and swerved for that purpose. While one woman crossed the road and went over to the left, the other turned to the right and was run over and killed. The driver stopped the lorry put the dead body into it and took it to *Kotwali* where a report of the occurence was made. The Magistrate found that there was no rashness or negligence on the part of the driver so far as his use of the road or the manner of driving was concerned but convicted him under Sec. 304-A, I.P.C., on the ground that the brakes of the lorry were not in perfect working order and that the lorry carried no horn. Held that the absence of the horn or the inefficiency of the brakes was not in any way responsible for the death and that the fact that the accused's lorry had no horn or had inefficient brakes could not, therefore, in the circumstances of the case, be taken into consideration under Sec. 304-A, I P C, though they could be made the subject of a prosecution under the Motor Vehicles Act *Emp.* v. *Akbar Ali*, 37 Cr L J. 975 = 164 I.C. 333 = 1936 O W.N. 720 = 1936 O.L.R. 484 = A.I R. 1936 Oudh 400 = 1936 Cr.C. 1083.

The accused was driving in an old and noisy motor car at night, along a road which was under repairs, at 10 miles per hour. The car ran over two coolies who happened to be sleeping on the road wrapt themselves up in *gamchas* and caused their death. Held that the accused could not reasonably be held liable to anticipate that he should find persons sleeping on a road and could not be held guilty of rashness or negligence for not doing so, that the fact that he was talking to a friend did not show that he was driving rashly or negligently as there was nothing to prevent a man talking and at the same time taking the ordinary precautions against accident and that consequently he was not guilty of an offence under Sec. 304-A, I.P.C. *H. W. Smith* v. *Emp.*,

27 Cr L J. 153 = 91 I C. 889 = 30 C.W.N. 66 = A I.R. 1926 Cal. 300 = 53 Cal 333

A passenger met with his death through falling off a lorry which was more probably overcrowded The lorry was being driven at an ordinary pace and in all probability the passenger fell off as a result of an ordinary jolt In these circumstances it was held to be wrong to attribute to the driver the death of the unfortunate passenger and to convict him under Sec 304-A, I.P C. *Jaimal Sing v Emp*, 33 Cr L J. 436 = 137 I. C. 262 = Ind Rul. 1932 Lah. 319 = A.I R. 1932 Lah. 366 = 33 P.L.R 492 = 1932 Cr C. 481.

Where drivers of two rival motor-buses caused a collision by driving in opposite directions at a reckless speed as a result of which several passengers were killed and some injured, they should be convicted under Sec. 304-A, I.P C., and not under paragraph 2 of Sec. 304 I P.C. *Bahat v. Emp*, 1931 M W.N. 556.

The accused, who was driving a motor lorry, saw ahead of him two bullock carts coming towards him in the middle of the road. The drivers of the carts, either seeing the accused lorry approaching or seeing him upon his sounding his horn, endeavoured to get out of the way but instead of both going to their own left from the middle of the road, as they should have done, one went one way and one the other. The accused finding that he could not pass on his own left hand, as he should have done, made a swerve hoping to get through on the right hand side. The lorry collided with a tree and overturned and one of the passengers was killed and some injured Held that, while there was negligence undoubtedly on the part of one of the bullock cart drivers, the accused, if he had his lorry under proper control, should have been able to avoid the consequence of that negligence, that his negligence, therefore, was the negligence that substantially caused the accident and that he was rightly convicted under sec 304-A, I.P C *Deota Misir v. Emp.*, 32 Cr. L J. 1061 = 133 I.C. 601 = 1931 A L.J 770 = Ind Rul 1931 All. 713 = A.I.R. 1931 All 706 = 1931 Cr. C 1041. In this case Boys, J, observed 'The idea is unfortunately very prevalent in a vague way in the minds of many drivers that it is sufficient to absolve them from the consequences of rash driving merely to show that the person to whom or to whose property they have caused injury was himself negligent. It is not so and the sooner rash drivers appreciate the fact the better."

Accused was driving a motor bus and when he came to a stationary tram car, instead of proceeding straight on to his left, he drove his bus to the other side of the tram, that is to his right, with the result that the bus knocked over a boy of fourteen, who had got down from the rear entrance of the tram. The boy had his head fractured and was taken to a hospital, where he subsequently died. Held, that the accused was guilty of negligence and was rightly convicted under sec. 304-A, I.P.C., as he did not blow his horn when he was about to pass the tram car, he went too close to the tram without regulating his speed accordingly and before he had actually cleared the tram car he accelerated his speed. *Bhagwandas Bakshi v. Emp*, 29 Cr. L. J. 897=111 I. C. 657=30 Bom. L. R. 655=A. I R. 1928 Bom. 208. In this case Fawcett, J., observed "It seems to me obvious that special caution must be taken by all motor vehicles, while passing a stationary tram car. In some places regulations provide that, if a motor vehicle comes up to a stationary tram car, on the side from which passengers alight, the motor vehicle must stop, until the tram car has started I know, for instance, that this is a rule in some parts of Germany, and I believe the same applies to several towns in Great Britain. The driver, if he does have to go close to a stationary tram car, should, at any rate, drive at such a pace as will allow him to stop his vehicle almost at once, should some passenger suddenly alight, and as the accused in the present case, had deviated to his right to pass on the side from which passengers alighted, there were extra obligations upon him to take due care in passing the tram."

A person driving a motor car is under a duty to control that car and he is *prima facie* guilty of negligence if the car leaves the road. It is for the person driving the car to explain the circumstances under which the car came to leave the road. Those circumstances may be beyond control and may exculpate him, but in the absence of such circumstances, the fact that the car left the road is evidence of negligence on the part of the driver. Where, therefore, the accused was driving a motor car which belonged to his master who was in the back seat and his master's clerk was in the front seat besides the accused who was driving car with the brakes in good order and the car went off the road and dashed headlong into a tree with the result that the clerk was killed. Held that the fatal accident occurred owing to the negligent way in

which he was driving it, probably owing to the fact that he way very sleepy and tired on account of being overworked continuously for some days before the occurrence that he was guilty under sec. 304-A, I P. C. and that, in the circumstances of the case, the sentence should be reduced from six months' to four months' rigorous imprisonment *In re Ratnam Mudaliar*, 35 Cr L J 691 = 148 I C 573 = 1934 M W N. 102 = A.I.R 1934 Mad 209 = 66 M.L J. 318 = 39 M.L W. 344 = 1934 Cr. C. 405.

The accused was driving a car from a wedding party. He had four passengers at the back and two in the front, which was too more than the car was properly capable of holding. He started from the party some distance behind another car which he desired to pass on a straight uncrowded road thirty-four feet wide Both the cars got into something in the nature of a race with accelerated speed Having got past the car the accused swerved to the left in order to get back to the proper side of the road, and in so doing, he lost control of his car which ran off the road, collided with a tamarined tree and was thrown into a field, with the result that three of the passengers sitting in the back seat were killed Held that the accused was guilty of a rash and negligent act, that he was rightly convicted under sec 304-A, I.P C, and sentenced to four mother's rigorous imprisonment and that the punishment inflicted by the Magistrate was not so grossly insufficient as to call for interference by the High Court in revision. In a case of this sort the Court cannot measure the sentence to be imposed by the consequences of the act, unless those consequences were necessarily inherent in the act If, for instance, a man drives a car rashly and negligently into a crowd of people, one might say that was a grossly rash act, because he was bound to kill or injure many people. But one cannot possibly say that going at too excessive a speed in order to pass another car, the accused was bound to kill the occupants in his own car. Having got six passengers in his car besides himself, it was certainly necessary for him to be careful But it cannot be held that the fact that three deaths resulted is a circumstance which ought greatly to enhance the punishment to be inflicted for the rash and negligent act of the accused. *Emp. v. Marshal*, 38 Cr L J. 658 = 168 I. C. 865 = A I. R. 1937 Bom 80 = 38 Bom, L. R. 1114.

A passenger with his family alighted from a motor bus as it was being driven carelessly and rashly. On an under-

taking being given to drive it at a low speed, he re-entered the bus but the rash driving continued and an accident occurred resulting in death of a person. Held that the driver was guilty of an offence under sec. 304-A, I. P. C. and that the sentence of one month's simple imprisonment was far too lenient even for a first offence in view of the fact that he was guilty of reckless disregard of the safety of passenger's lives and was enhanced to one year's rigorous imprisonment which was the proper sentence. *Mohamed Usman* v. *Emp.*, 1937 M W. N. 1328.

The mere fact that a human life is lost does not justify the the Court in passing a deterrent sentence, if the life lost could not have been reasonably anticipated by the accused. In all these cases one has to consider whether the rash and negligent act of the accused which has occasioned the death, shows callousness on his part as regards the risk to which he was exposing other persons. The severity of the sentence must depend to a great extent on the degree of callousness which is present in the conduct of the accused. Driving motor cars has become an essential part of human activities, and it is impossible to avoid a certain number of accidents. It is no part of the duty of Courts to punish with savage sentences every motorist who has the misfortune to have an accident, which results in a loss of life, even though the accident be due to an error of judgment on the part of the driver. The circumstances of each case must be considered in imposing sentence. When, therefore, the accused committed an error of judgment, but having done so, he did his best to avoid the consequences of his error and there was no callous conduct on his part, the High Court refused to interfere with the discretion of the trying Magistrate in imposing merely a fine of Rs 150/-. *Emp.* v. *Khan Mahomed Shermahomed*, 38 Cr L J. 660 = 168 I. C. 870 = A. I. R. 1937 Bom. 96 = 38 Bom. L. R. 1111.

Where the evidence against the accused is that just before the accident he asked his driver to blow the horn and overtake the car which was going ahead, it does not warrant a charge under S. 304-A read with S. 114, Penal Code. In *re* v. *Seetharama Chettiar*, A. I. R. 1939 Mad. 571 = 49 M. L. W. 554 = 1939 M. W. N. 416 = 1939 M. Cr. C. 137.

Where the accused was driving his lorry loaded with fruit when a boy aged 6 struck against the lorry, was caught in the

wheel of the lorry, was crushed and died on the spot. Held, that no rash or negligent act could be ascribed to the accused as he was able to pull the lorry within a distance of 21 feet and that he should be acquitted. *Sera Singh Rattan Singh* v. *Emp.*, A. I. R 1939 Pesh 33 = 40 Cr. L. J. 854 = 184 I. C. 157.

Evidence—In the case of *Waugh* v *Campbell*, (1920) S. C. (J) 1, it has been held that in order to support a conviction for reckless and negligent driving, the recklessness or negligence need not be flagrant or even wilful or morally blameworthy in any way The question is one of facts But an error of judgment alone is not sufficient to convict a man There must be criminal negligence which means "gross or culpable neglect or failure to exercise reasonable and proper care. In the case of *H B. Spiers*, Petitioner v. *Johiuddin*, O. Party, 36 C W. N. 246 the rule was directed against an order made on the 17th November 1930 by the Additional Presidency Magistrate whereby the petitioner H B Spiers was convicted under secs. 16 and 17 part II of the Motor Vehicles Act and sentenced to pay a fine of Rs 40 The rule was issued on three grounds 1. That the conviction was without jurisdiction and illegal inasmuch as secs 16 and 17 part II of the Motor Vehicles Act do not apply to the facts of the case. It appears that the offence with which the accused was charged was really an offence under section 5 and section 15 deals with offence for which no penalty has been specifically provided Section 5 is however, not one of such offences. The offence which is contemplated in this section has been made punishable by the section itself with a fine of Rs. 500 There is no doubt, therefore, that the sections which were mentioned in the charge were not applicable to the facts of the case' That it was not by a reference to the numbers of the sections alone that the accused was called upon to meet the case set up by the prosecution. The case which the accused was called on to meet was the case of negligently driving a private car No. 27834 along the dockyard road leading towards 28 coal berth, by the right side and thereby colliding with a taxi cab No. T. 621. The accused therefore knew full well what the charge he would have to meet was and that being so, if there was any mistake in the numbers of the Act, the accused cannot be said to have been in any way prejudiced thereby. The first ground, therefore, fails for the reason that it is too technical. The rule, however, must succeed on the other ground. The learned Magistrate in his order says that he accepted the evidence of certain witness.

The evidence of that witness would show that there was at the time no space on the left side for the car. His evidence also shows that the space on the right was very narrow. But if one is to accept the statement of the driver of the cab one gets the fact that the taxi-driver stood still at the time. If under these circumstances, the petitioner tried to pass by the right side of the taxi cab with the result that there was a collision for the reason that the space on the right side was not sufficiently wide for his car, there was nothing but an error of judgment on the part of the petitioner. And this is what the learned Magistrate has also found. According to him, it was an error of judgment which led to the occurrence complained of But to convict a man on error of judgment alone would not be sufficient.

Reckless driving—The marginal note is reckless driving but the body of the section mentions the reckless or negligent driving. Whether the driving must be both reckless and negligent and the word 'or' means 'and' or the word 'reckless' has the same meaning as the word 'negligent' we will discuss later on. At first we propose to assume that both the words have the same meaning and we shall see what sort of negligence is required to attract this section. The negligence must be a criminal negligence. The authority for this proposition will be found in the case of *Chisholm* vs. *Doulton*, (1889) 22 Q. B. D. 736. The facts of the case are that one owner and occupier of certain premises in the Metropolis used for the purpose of manufacture was summoned under the Smoke Nuisance Act 1853 for negligently using a furnace at such premises so that the smoke arising therefrom was not effectually consumed. The furnace in question was constructed so as to consume its own smoke if carefully used. But emission of smoke was caused by the carelessness of the stoker employed by the owner. At page 741 of the report it was held by Cave, J. that it is a general principle of the criminal law that there must be an essential ingredient in a criminal offence some blameworthy condition of mind. Sometimes it is negligence, sometimes malice, sometimes guilty knowledge—but as a general rule there must be something of that kind which is designated by the expression *mens rea*. Moreover, it is a principle of the criminal law that the condition of mind of the servant is not to be imputed to the master. A master is not criminally punishable for a death caused by his servant's negligence, and still less for an offence

depending on the servant's malice; nor can a master be held liable for the guilt of his servant in receiving goods knowing them to have been stolen. It was further held at page 742 that the word "negligently" imports a blameable condition of mind. In other words, the negligence must be criminal negligence.

That the negligence must be culpable has been held in the case of *Nidamarti Nagabhushanam*, 7 Mad. H. C. R 119, 1 Weir 324. In this connection the reader must consult the case of *Empress* v. *Kelabdi Mondal*, 4 Cal. 764. The subject has been discussed in the case of *H. W. Smith* v. *Emperor*, 53 Cal. 333. The facts of this case are that when the accused, driving a motor car at night, entered a road which under repairs was closed to traffic and ran over and killed two coolies who were sleeping on the road with their bodies completely covered up except for their faces At page 341 of the report Mukherji J. held—In the case of *Reg* vs *Nidamarti*, 7 Mad. H. C. R. 119, Holloway J., said this "culpable rashness is acting with the consciousness that the mischievous and illegal consequences may follow but with the hope that they will not, and often with the belief that the actor has taken sufficent precautions to prevent their happening The imputability arises from nothing despite consciousness. Culpable negligence is acting without the consciousness that the illegal and mischievous effect will follow, but in circumstances which show that the actor has not exercised the cautions incumbent upon him, and that, if he had, he would have the consciousness. The imputability arises from the neglect of the civic duty of circumspection."

In the case of *Reg.* v. *Idu Beg*, 3 All. 776=1881 A W.N 132=6 Ind. Jur. 261=2 Ind Dec. (N.S) 697, Straight J, observed as follows: "Criminal rashness is hazardous or dangerous or wanton act with the knowledge that it is so and that it may cause injury, but without the intention to cause injury or knowledge that it will probably be caused. The criminality lies in running the risk of doing such an act with recklessness or indifference as to the consequences Criminal negligence is the gross and culpable neglect or failure to exercise that reasonable and proper care to guard against injury either to the public generally or to an individual in particular which, having regard to all the circumstances out of which the charge has arisen, it was the imperative duty of the accused person to have adopted. The learned Deputy Legal Remembrancer has cited before us a number of other

decisions in which section 304-A of the Indian Penal Code or the English law of manslaughter by negligence has been explained, and also referred to some cases dealing with negligent use of public way, in order to show under what circumstances special care is necessary, want of which will make one liable for the offence. The one principle of universal applicability deducible from all these cases is that which was laid down by *Alderson B.*, in *Blyth* v. *Birming-ham Water Works Co.*, (1856) 11 Exch. 781, 784 and adopted by Brett, J. in *Smith* v. *London and South Western Railway Co.*, (1870) L. R. 5 C. P. 162. Each case must be judged in reference to the precautions which, in respect to it, the ordinary experience of men has found to be sufficient, though the use of special or extraordinary precautions might have prevented the particular accident which happened." It was under the circumstances of the case finally held that the accused was not guilty of causing death by a rash and negligent act.

See also notes given above under the heading "Rashness or negligence."

Recklessly or negligently—Negligence is culpable carelessness. "It is," says Willes J. (in the case of *Grill* v. *General Iron Screw Colliery Coy.*, L. R. C. P. at page 612), "the absence of such care as it was the duty of the defendant to use." What then is meant by carelessness? It is clear, in the first place, that it excludes wrongful intention. These are two contrasted and mutually inconsistent mental attitudes of a person towards his acts and their consequences. No result which is due to carelessness can have been also intended. Nothing which was intended can have been due to carelessness. (*Kettlewell* v. *Watson*, 21 Ch. D. at page 706). It is to be observed, in the second place, that carelessness or negligence does not necessarily consist in thoughtlessness or inadvertence. This is doubtless the commonest form of it, but it is not the only form. If I do harm, not because I intended it, but because I was thoughtless and did not advert to the dangerous nature of my act, or foolishly believed that there was no danger, I am certainly guilty of negligence. But there is another form of negligence, in which there is no thoughtlessness or inadvertence whatever. If I drive furiously down a crowded street, I am fully conscious of the serious risk to which I expose other persons. I may not intend to injure any of them, but I knowingly and intentionally expose them to the danger. Yet if a fatal accident happens, I

am liable, at the most, not for wilful, but for negligent homicide. When I consciously expose another to the risk of wrongful harm, but without any wish to harm him and harm actually ensues, it is inflicted not wilfully, since it was not desired, nor inadvertently, since it was foreseen as possible or even probable, but nevertheless negligently. If, then, negligence or carelessness is not to be identified with thoughtlessness or inadvertence, what is its essential nature ? The correct answer seems to be that a careless person is a person who does not care The essence of negligence is not inadvertence but indifference. Indifference is exceedingly apt to produce thoughtlessness or inadvertence, but it is not the same thing, and may exist without it, as we have seen from the example already given If I am careless, that is to say, indifferent, as to the result of my conduct, I shall very probably fail to acquire adequate foresight and consciousness of them ; but I may, on the contrary, make a very accurate estimate of them, and yet remain equally indifferent with respect to them, and therefore equally negligent Negligence, therefore, essentially consists in the mental attitude of undue indifference with respect to one's conduct and its consequences " It follows from the foregoing analysis that negligence is of two kinds, according as it is or is not accompanied by inadvertence Advertent negligence is commonly termed wilful negligence or recklessness. Inadvertent negligence may be distinguished as simple In the former the harm done is foreseen as possible or probable, but it is not willed. In the latter it is neither foreseen nor willed "—Salmond's Jurisprudence, 7th Edn , page 408.

Rule of the Road—Evidence of Negligence—There is a duty on every user of the road to make a reasonable use of it for the purposes of passing along it, and to allow others to do so also. A person driving a motor car has a right to expect that the persons negligently loitering on the road would make way for him, especially when he has seen that they were aware of his approach Even when they signalled to him to stop he is not bound to do so, whatever the rules of country may be. He has the right to assume that they would get out of the way when they saw him ignore their signals. Motorists are not the only persons who owe a duty of care. Loiterers also have a responsibility and must conform to the ordinary usage of the road. *Emp.* v *Homnarain Sukhailal Kachhi*, 35 Cr.L.J. 696 = 148 I C. 511 = 1931 Cr C 272 = A.I.R 1934 Nag. 65 = 30 N.L.R. 317.

The accused who was driving his own motor car, attempted to pass a Victoria which was a little ahead of him on the left, but as he was doing so the driver of the Victoria turned it suddenly to the left with the result that it collided with the motor car. The accused was, on these facts, convicted of driving his motor car negligently and recklessly. It was held, that the Victoria driver having first directed his carriage towards his right was not justified in so suddenly changing his course back to the left as to place the overtaking motor in the position of difficulty which he did, and that, therefore, the accused could not be said to have been negligent or reckless in driving his motor car. The rule of the road is not an invariable or inflexible rule, and a deviation from it may upon occasion be not only justifiable but actually necessary. See *Wayde* v. *Lady Carr,* (1883) 2 D. and R. 255 : 1 L. J. (O. S.) K. B. 63 : 25 R. R. 554. The mere passing of another vehicle on the left is, no doubt, primarily evidence of negligence, but the inference arising from the solitary circumstance may be rebutted by the other circumstances appearing in the case. Section 2 of the Bombay Motor Vehicles Act requires the Court to have regard, not only to the side on which one vehicle passes another but to all the circumstances of the case, including the nature, condition and use of the road and to the amount of traffic which actually is or may reasonably be expected at the time on the road : *In re Jehangir C. Darar,* 12 Cr. L. J. 167.

Driving on the wrong side of the road—*Accused,* while driving a motor car on the wrong side of the road at a blind corner between the two roads of considerable traffic came in collision with a motor bicycle and caused damage to the side-car of the bicycle. It was held that the accused was guilty of an offence under section 279 of the Penal Code. *Yar Mahomed* v. *Emperor,* 84 Ind. Cas. 253 = 26 Cr. L. J. 253 = 16 S. L. R. 147. See also notes under the heading "Rashness or negligence."

Sufficiently broad Road.—Two cars were going under 15 miles per hour along the road from south to north, and while another car came in the opposite direction from north to south, one baby car passed the two cars going towards the north. The baby car was going about 25 miles per hour. The road was at the place 40 to 50 feet wide as would give ample room for 4 cars to pass abreast with any amount of room to spare. There was no traffic of any kind on the road

at the time except the 4 cars. The driver of the baby car was not shown to be over the wrong side of the road It was held that the driving by the driver of the baby car was not negligent or reckless. *S. Ganguli* v *Emperor*, A. I. R. 1929 Rang. 14 = 115 I.C. 900 = 30 Cr. L.J. 539 = Ind Rul. 1929 Rang. 132.

Abetment.—The offence of abetment cannot be brought home to the owner of a vehicle for omitting to inform the driver about the rules and is not tenable as there is no illegal omission. *Emperor*, v. *Cooverji*, 9 Bom. L. R. 159.

Cancellation of License—The applicant was found guilty of an offence under section 5 of the Motor Vehicles Act. He was convicted and fined Rs. 50 and his driving license was ordered to be cancelled by the trying Magistrate. The Sessions Judge in revision, held that although the applicant's conduct came within the purview of section 5, the sentence passed on him was too severe. It was held that the order of the Magistrate directing the license of the applicant to be cancelled ought to be set aside *Charan Singh* v. *Emperor*, 23 A. L. J. 790 = 26 Cr L. J. 1254 = 88 I C. 998 = A. I. R. 1925 All. 798. But see 26 Cr. L. J. 1536 given above under the heading " Section 5, Act. VIII of 1914."

Endorsement of Conviction on License—When a person is convicted of reckless driving under section 5 the particulars of the conviction should be endorsed on his license under section 18 (2) of the Act: *Emperor* v. *Basappa*, 27 Bom. L. R. 1050. Now see sec. 19 of the Act.

Offence Under Special Act.—The purpose of inflicting one day's imprisonment is to exercise clemancy towards an accused and so it is ordinarily passed where imprisonment is the only punishment allowed by law. Where there has been special legislature for a particular type of offence the maximum provided in such special Act for that particular offence may be accepted as appropriate maximum. In the case of *Emperor* v. *H. C. Bayne*, 3 Cr L. J 494, the Chief Justice Sir Lawrence Jenkins held that suspension of license is an appropriate penalty in the matter of a rash and negligent driving. The period of suspension was reduced to three calender months.

Not stopping Car.—Every case of collision between a motor car and a pedestrian must be judged on its merits. Where a person by his rash and negligent driving knocks a passenger

over with impunity and leaves him where he was without stopping to see the injury caused, he must be dealt with severely. *Emperor* v. *Aghan*, 104 Ind. Cas. 910. See sec. 87 of the Act.

Sections 279, 338 I. P. C.—A motor driver who drove recklessly and thereby caused grievous hurt to a person was convicted under section 5. He was subsequently prosecuted under section 279 of the Penal Code.

It was held that the accused could not be prosecuted under section 279 I. P. C. but he is not protected from consequences of rash driving under section 338 I. P. C. *Gur Naraian* v. *Emperor*, 29 Cr. L. J. 271.

Charge:—The charge of allowing an unlicensed man to drive is not included logically in the charges of abetting his driving rashly and negligently. *Mahomed Jamal* v. *Emp.*, 30 Cr. L. J. 1077 (1078) = 119 I. C. 536 = Ind. Rul. 1929 Sind 216 = A. I. R. 1930 Sind 64.

When the offence complained of was entered under Sec. 279 I. P. C., a conviction under Sec. 5 of Act. VIII of 1914 was not bad. *Charan Singh* v. *Emperor*, 26 Cr. L. J. 1254 (1255) = 88 I. C 998 = 23 A. L. J. 790 = A I. R. 1925 All 798.

Rule 27A of the Bombay Rules—It was held that a breach of Rule 27-A would be commited the moment the accused was driving the car in an intoxicating state and the act of rashness in regard to which he was convicted was a subsequent event, and that, therefore, there was nothing illegal in his being separately charged and tried for each of two offences: *Emperor* v. *Rama Deogi*, A. I. R. 1928 Bom. 231.

Signal to slow down.—A signal to slow down must be obeyed as to stop instantaneously. Drivers should not speculate reasons of signal because the giver of such signals is the sole judge. In the case of *W. C. Dutt* v. *Emperor*, A. I. R. 1933 Nag. 177 it was held that travelling at a great pace passing a stationary lorry, where it had been indicated to him that he must drive with the greatest caution, could not be called other than *reckless driving*. But he *cannot* be punished twice for the same offence.

Stationary Van.—The owner of a stationary van is not liable because (1) there was no inherent danger in a sound stationary and immobile vehicle, left unattended on the street, and (2) even if the stationary van was an obstruction to the

use of the highway, there was no relation of cause and effect between an obstruction to the use of the highway and the occurrence of an accident, *Lynch* v. *Nurdin*, (1841) 1. Q B. 29, distinguished, *Letham* v. *R. Johnson & Nephew Ld* (1913) 1 K. B 398 applied; *Donavan and another* v. *Union Cartage Coy*, (1933) 2 K. B. 71.

Motor Race Course.—Certain persons were the owners of a racing track for motor cars. The track was oval in shape and measured two miles or more in circumference. It contained a long staight stretch known as the finishing straight which was over 100 feet wide and was bounded on its outerside by a cement kerb 6 inches in height, beyond which was a strip of grass 4 feet 5 inches in width enclosed within an iron railing 4 feet 6 inches high. Spectators were admitted on payment to view the races, and stands were provided in which they could do this in safety, but many persons preferred to stand along and outside the railing. Among the competing cars in a long distance race in this track two cars were running along the finishing straight at a pace over 100 miles an hour and were approaching a sharp bend to the left, the car in front and more to the left turned to the right, the other car did the same, but in so doing touched the off side of the first mentioned car with the strange result that the first mentioned car shot into the air over the kerb and the grass margin and into the railing, killing two spectators and injuring others. The course was opened in 1907. No accident like this had ever happened before. It was held that it was the duty of the owners of the racing track to see that the course was as free from danger as reasonable care and skill could make it Judgment was given against these owners in the trial court. The appellate court reversed the decision of the trial court and held that no person can be under a legal obligation to guard against that which he has no legal duty to anticipate, unless, indeed, he is an insurer of the safety of his invitees: *Hall* v. *Brookland Auto Racing Club*, (1933) 1 K. B 205.

Burden of Proof:—In case of negligence resulting in inevitable accident—

In the case of *Winnipeg Electric Company* v. *Jacob Geel* 1933, A L. J. R. 618 (P. C), the appellants pleaded by way of defence that the accident in question was inevitable. It was held by Their Lordships of the Judicial Committee that this plea depended on the allegation that the accident was due to latent defect in braking mechanism, that is, to

something which could not have been avoided by the exercise of ordinary care or caution and skill to paraphrase the definition given in the *Marpesia*, (1872) L. R. 4. P. C. 212, and repeated in the *Merchant Prince*, (1892) P. 179 by Fry L. J. at p. 190. In support of this plea, the appellants relied on evidence that all proper inspection had been made. It is clear from the findings of the jury that the jury did not accept this plea. But Mr. Pritt has strenuously argued on various *grounds that that plea should have succeeded. His* contentions may be thus summarised: while admitting that sec. 62 of the Act places the burden on the appellants to disprove negligence, yet if there is no evidence of negligence apart from the statutory presumption, and the defendants who adduce evidence by witnesses and the onus is discharged by the defendants and if the matter rests there, the Judge ought to withdraw the case from the jury and nonsuit the plaintiff on the ground that the evidence as to negligence is all one way; in other words what Mr. Pritt has contended is that the defendants' evidence, being the only evidence on the issue of negligence, has displaced the statutory presumption, and constitutes a preponderance of evidence on that issue which justifies, or indeed requires, a judgment to be entered for the defendants. Their Lordships cannot accept their view of the operation of the section. It is further contended that Mr. Pritt relied in support of his contention on the language of Harvey e. g., in *Earnat* v. *Mathews*, 16 A. L. R. 275 at 277 a case under similar words in the corresponding statute of Alberta. The learned Chief Justice says :—

In a case such as this where the rule of the statute applies, the plaintiff in the first instance need do no more than show that he sustained damage from a motor vehicle. Then in the absence of evidence by the defence he is entitled to succeed; because the statute makes a case of presumptive negligence; but when the defendant gives his evidence, if it is sufficient by itself to make a *prima facie* case of absence of negligence and the plaintiff's evidence is rebuttable, the case is much the same as any damage action. The side which has the preponderance of evidence on the question of negligence should win. It would thus appear that when once the defendant has made out a *prima facie* case of absence of negligence by evidence, which of course, the Court or jury accepts as reliable the rule *res ipsa loquitur* or in this case the rule of the statute has no further application.

Their Lordships cannot for reasons already given accept this as a correct statement of the law. In Their Lordships' opinion the rule applicable in such cases is correctly stated by Turgeon J. A. in a case under similar legislation in Saskatchewan viz., *Stanley* vs *National Fruit Coy.* 21, Saskat L. R. 137 at 141.

Section 43 of the Act places the onus of proof upon the defendants. This means that the defendants must loose if no evidence of the circumstances of the accident is given at all, or if the evidence leaves the Court in a state of real doubt as to negligence or no negligence, or is so evenly balanced that the Court can come to no sure conclusion as to which of the parties to the accident is to blame. But if evidence for or against is given upon the points in question, the rule in favour of the preponderance of the evidence should be applied as in ordinary civil cases, and the statutory onus will cease to be a factor in the case if the court can come to a definite conclusion one way or the other, after hearing and weighing the whole of the testimony. Nor does this statutory onus increase the decree of diligence required in the owner or driver of a motor vehicle. His duty in others remains the same, notwithstanding the shifting of the burden of proof. He must exercise at all times the same measure of caution as might be expected, in like circumstances, of a reasonably prudent man. He must take proper precautions to guard against risks that might reasonably be anticipated to arise from time to time as he proceeds on his way. This degree of care and nothing more, is required of him except in cases specially provided for with which we are not concerned here.

Their Lordships also agree with the statement of the principle made by Duff J in the following words in his judgment in the Supreme Court in the present case .—

The statute creates, as against the owners and drivers of motor vehicles, in the condition therein laid down, a rebuttable presumption of negligence. The onus of disproving negligence remains throughout the proceedings. If at the conclusion of the evidence, it is too meagre or too evenly balanced to enable the tribunal to determine this issue, as a question of fact, then, by force of the statute, the plaintiff is entitled to succeed.

The position of the defendants under the statute is thus analogous to the position of the defendant in a case to which

the principle often called *res ipsa loquitur* applies. The law applicable to such a case is thus, for example, stated by Fry L. J. in *Merchant Prince*, (1892) 170 at 189 :—

It is a case in which a ship in motion has run into a ship at anchor. The law appertaining to that class of case appears to be clear. In the case of *The Annal Lyle*, 11 P. D. 114, it was laid down by Lord Herschell that in such a case the cause of the collision might be an inevitable accident, but unless the defendants proved this, they are liable in damages. The burden rests on the defendants to show inevitable accident.

Miscellaneous.—The plaintiff, an infant, was crossing a road in the care of his grandfather. When they had reached the middle of the road, the grandfather was startled by the approach of the defendant company's omnibus and released the infant plaintiff's hand. The infant plaintiff was struck by the omnibus and was injured. In an action brought by the infant, suing by his father as next friend, the jury found that the company's servant was negligent and that the infant plaintiff's grandfather was guilty of contributory negligence: held that the infant plaintiff was entitled to recover against the company notwithstanding the negligence of his grandfather. *Mills* vs. *Armstrong*, the Bernina (1888) 13 App case 1 followed and applied, *Waite* vs. *North Eastern Rly. Co.*, (1888) E. B & E. 719, 728 not followed. *Oliver* vs. *Birmingham & Midland Motor Omnibus Co. Ltd*, (1933) 1 K B 35.

The appellant was charged on an indictment containing two counts: (1) manslaughter of a man who was knocked down and killed by the appellant's motor lorry; (2) driving the lorry in a manner dangerous to the public contrary to section 11 of the Road Traffic Act 1930. The jury acquitted the appellant of manslaughter, but convicted him of dangerous driving. On a submission that this verdict was bad, in that the *mens rea* required for the two offences was identical, and then it was therefore impossible for the jury to negative that *mens rea* on the first count, and to find it proved on the second, Mackinoon J. overruled the submission and upheld the conviction. He sentenced the appellant to one month's imprisonment in the second division, but admitted him to bail, and granted a certificate that the case was fit for appeal.

It was held by the Court of Criminal appeal that the conviction was right. Each count in an indictment is a separate

indictment, and since the appellant on an indictment for manslaughter could not have been convicted of dangerous driving, he could not have pleaded *autrefois acquit* if the charge of dangerous driving had been tried separately. It is, however, in the opinion of the court, undesirable that a charge of dangerous driving should be made a count in an indictment for manslaughter. Where the prosecution desire to prefer both charges they ought to do so in two separate indictments. *The King* vs *Stringer*, (1933) 1 K. B. 704.

The appellant was charged before a court of summary jurisdiction with driving a motor vehicle without due care and attention, contrary to section 12 of Road Traffic Act 1930. No warning had been given to him under section 21 (a) of the Act at the time of the alleged offence, nor was a summons served within 14 days thereafter, but a notice was sent to him by the chief constable 2 days after the alleged offence by registered post stating. "In accordance with the provisions of the Road Traffic Act 1930, s. 21, I have to give you notice that you have been reported for the question of prosecution to be considered in respect of your having driven a motor car P. K. 8770, in a manner dangerous to the public in (the time, place and circumstances of the alleged offence were stated with particularity)". A summons was issued later for driving without due care and attention at that time and place

The appellant objected that this was not a valid notice under section 21 in that (a) it was a notice not of an intended prosecution, but merely that the question of prosecution was being considered, and (b) that the offence referred to in the notice was "driving in a manner dangerous to the public", i.e. an offence against section 11 of the Act whereas the offence charged was "driving without due care and attention" under section 12.

It was held that the notice was good It was not necessary that a prosecution should have irrevocably decided upon before the notice was sent out. The notice sent sufficiently specified the nature of the alleged offence with all particulars necessary to recall the mind of the motorist to the facts on which it was intended to rely. "Driving to the danger of the public" was not a term of art referable only to the offence created by section 11 and an accused person was not entitled to object that he was charged with a less serious offence

than the prosecution originally contemplated. *Milner vs. Allen*, (1933) 1 K.B 698.

Driving while under the influence of drink or drugs.

117. Whoever while driving or attempting to drive a motor vehicle is under the influence of drink or a drug to such an extent as to be incapable of exercising proper control over the vehicle, shall be punishable for a first offence with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both, and for a subsequent offence if committed within three years of the commission of a previous similar offence with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

Notes.

Notes on Clauses :—This is at present only an offence against provincial rules with the penalty specified in section 16 of the Indian Motor Vehicles Act, 1914, and possible suspension of the license under section 18.

The offence is one which should be penalised heavily and be accompanied by disqualification (suspension of license). This has been provided for in section 17 (3) It has also been made cognisable, but the proviso has been added to section 128 to prevent undue detention of an accused person in custody.

Changes made by the Select Committee :—The Select Committe has again here omitted the words "in a public place" for the same reason as that given in connection with section 116.

Under the Influence of drink or a drug :—Under this section the offence is that of being under the influence of drink or a drug to such an extent as to be incapable of exercising proper control over the vehicle. The mere finding that the accused was under the influence of drink or a drug is insufficient to support a conviction. Vide *R. V. Hacker* (1931). 171 L. T. Jo. 168 in this connection. See also *Emp. v. Rama Devji*, 29 Cr. L. J. 981 (982) = A.I.R. 1928 Bom. 231 = 30 Bom. L.R. 636 =

112 I.C. 101 where it has been observed that the words "under the influence of liquor" do sufficiently represent the meaning of the word "intoxicated" except that it may be said that the latter word expresses a degree of influence which is not sufficiently expressed in the words "under the influence of liquor". But this question of degree is one that is at any rate involved in the words.

In framing a charge under this section the prosecution should state clearly whether the accused was under the influence of drink or a drug at the time of occurrence. If both the words are used a conviction would probably be held bad for duplicity. Vide *R.* v. *Wells* (1914), 91 L. T. 98 = 69 J. P. 392; *R.* v. *Jones*, (1921) 1 K. B. 632 = 85 J. P. 112 in this connection.

English law :—See section 15 of the Road Traffic Act, 1930, quoted under section 112 of this Act.

118. Whoever drives a motor vehicle in any public place when he is to his knowledge suffering from any disease or disability calculated to cause his driving of the vehicle to be a source of danger to the public, shall be punishable for a first offence with fine which may extend to two hundred rupees and for a second or subsequent offence with fine which may extend to five hundred rupees.

Driving when mentally physicall unfit to drive.

Notes.

Notes on Clauses .—It is obviously necessary that persons who become temporarily unfit, *e.g.*, through a broken arm, extreme fatigue or illness should be barred from driving, and in case of accident from pleading temporary unfitness as the cause of the accident.

Changes made by the Select Committee :—The Select Committee omitted the words "or likely to suffer", and the reference to "mental disability". They are dangerously wide and difficult of reasonable interpretation.

In view of these omissions the words "mentally or" ought also to have been omitted from the marginal notes.

Punishment for abetment of certain offences.

119. Whoever abets the commission of an offence under section 116, 117 or 118, shall be punishable with the punishment provided for the offence.

Racing and trials of speed.

120. Whoever without written consent of the Provincial Government permits or takes part in a race or trial of speed between motor vehicles in any public place shall be punishable with imprisonment for a term which may extend to one month or with fine which may extend to three hundred rupees, or with both.

Notes.

A race or trial of speed :—Presumably the distinction between a "race" and a "trial of speed" is that the former expression refers to the case where two or more vehicles are driven concurrently, whereas the trial of speed may refer to competition, where vehicles are driven successively over a portion of the road. Vide page 95 of Mr. F. Llewellyn-Jones's book on the Road Traffic Law.

English Law :—See section 13 of the Road Traffic Act, 1930, quoted under section 112 of this Act.

Using vehicle in unsafe condition.

121. Any person who drives or causes or allows to be driven in any public place a motor vehicle or trailer while the vehicle or trailer has any defect, which such person knows of or could have discovered by the exercise of ordinary care and which is calculated to render the driving of the vehicle a source of danger to persons and vehicles using such place, shall be punishable with fine which may extend to two hundred and fifty rupees or, if as a result of such defect an accident is caused causing bodily injury or damage to property, with fine which may extend to five hundred rupees.

Notes.

Notes on Clauses:—This provision usually appears in provincial rules.

Changes made by the Select Committee:—The penalty has been reduced, but the Select Committee has added a provision for an enhanced penalty where bodily harm or damage to property actually occurs as a result of the offence.

Sale of vehicle in o alteration o vehicle to a condition contravening this Ac

122. Whoever, being an importer of or dealer in motor vehicles, sells or delivers or offers to sell or deliver a motor vehicle or trailer in such condition that the use thereof in a public place would be in contravention of Chapter V or any rule made thereunder or alters the motor vehicle or trailer so as to render its condition such that its use in a public place would be in contravention of Chapter V or any rule made thereunder shall be punishable with fine which may extend to two hundred rupees:

Provided that no person shall be convicted under this section if he proves that he had reasonable cause to believe that the vehicle would not be used in a public place until it had been put into a condition in which it might lawfully be so used.

Notes.

Changes made by the Select Committee.—The Select Committee added the words "being an importer of or dealer in motor vehicles" and thereby excluded from the scope of this section the casual private seller of a vehicle and confined it to importers and dealers only.

Using vehicle without permit.

123. (1) Whoever drives a motor vehicle or causes or allows a motor vehicle to be used or lets out a motor vehicle for use in contravention of the provisions of sub-section (1) of section 42 shall be punishable for a first offence with fine which may

extend to five hundred rupees, and for a subsequent offence if committed within three years of the commission of a previous similar offence with a fine which shall not be less than one hundred rupees and may extend to one thousand rupees.

(2) Nothing in this section shall apply to the use of a motor vehicle in an emergency for the conveyance of persons suffering from sickness or injury or for the transport of materials for repair or of food or materials to relieve distress or of medical supplies for a like purpose :

Provided that the person using the vehicle reports such use to the Regional Transport Authority within seven days.

Notes.

Changes made by the Select Committee :—The Select Committee reduced the penalty for a first offence and made a subsequent offence punishable with enhanced penalty only if committed within three years of a previous one. The more definite word "drives" has been substituted for "uses" in the first line.

Driving vehicle exceeding permissible weight.

124. Whoever drives a motor vehicle or causes or allows a motor vehicle to be driven in contravention of the provisions of section 72 or of the conditions of any permit issued thereunder, or in contravention of any prohibition or restriction imposed under section 74 shall be punishable *for a first offence with fine which may extend* to one hundred rupees, and for a second or subsequent offence with fine which may extend to five hundred rupees.

Notes

Changes made by the Select Committee :—The alterations made are partly consequential on the changes made by the

Select Committee in section 72. A reference to section 74 has been inserted.

Changes made by the Legislative Assembly :—The penalties provided for in this section were reduced to their halves in the course of the debates in the Legislative Assembly.

Causes or allows :—The working of sec 15 A and the general plan of the Act (VIII of 1914) show that the burden is on the prosecution to show that the accused (i e. the owner) knew that the lorry was overloaded. Such knowledge could be proved by adducing evidence, that for example, the lorry had just left the owner's premises or that all the goods on the lorry had come from there. Where all that is known is that the lorry was overloaded, it is unlikely that the accused knew that the lorry was overloaded and the prosecution did not prove its case. *In re W. K. Dorairaja Mudaliar*, 39 Cr. L.J. 980 = 178 I. C 117 = 1938 M.W.N 867 = 48 M.L.W. 319 = (1938) 2 M L.J. 582.

Driving uninsured vehicle

125. Whoever drives a motor vehicle or causes or allows a motor vehicle to be driven in contravention of the provisions of section 94 shall be punishable with imprisonment which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Notes.

Chapter VIII of this Act in which section 94 is included, shall not have effect until the 1st day of July, 1943. Consequently no prosecution will be maintainable against any person before that date under this section.

Taking vehicle without authority.

126. Whoever takes and drives away any motor vehicle without having either the consent of the owner thereof or other lawful authority shall be punishable with imprisonment which may extend to three months, or with fine which may extend to five hundred rupees or with both :

Provided that no accused person shall be convicted under this section if the Court is

satisfied that the accused acted in the reas able belief that he had lawful authority or the reasonable belief that the owner would the circumstances of the case have given consent if he had been asked for.

English Law.—This section is substantially a reprod tion of sub-sec. (1) of sec. 28 of the Road Traffic Act, 1 (20 & 21 Geo. 5, c. 43) which runs as follows :—

Taking of motor vehicle without owner's consent or other authority to be an offence.

28.—(1) Every person who takes and drives away motor vehicle without having either the consent of the ow thereof or other lawful authority shall be liable—

(a) on summary conviction, to imprisonment for a te not exceeding three months, or to a fine not exce ing fifty pounds ;

(b) on conviction on indictment, to imprisonment fo term not exceeding twelve months, or to a fine exceeding one hundred pounds, or to both such prisonment and fine :

Provided that, if on summary proceedings under this s tion the Court, or on proceedings under this section on ind ment the jury, are satisfied that the accused acted in reasonable belief that he had lawful authority, or in reasonable belief that the owner would, in the circumstan of the case, have given his consent, if he had been asked the for, the accused shall not be liable to be convicted of offence.

(2) If on the trial of any indictment for stealing a mo vehicle the jury are of opinion that the defendant was guilty of stealing the motor vehicle but was guilty of an offen under this section, the jury may find him guilty of an offen under this section and thereupon he shall be liable to punished accordingly.

(3) Any police constable may arrest without a warra any person reasonably suspected by him of having committ or of attempting to commit an offence under this section.

Scope of the section:—This section was enacted so as cover the numerous cases which had come before the Cour when persons had taken and driven cars away and had su sequently abandoned them. Owing to the difficulty of pro ing "felonious intent" when the accused pleaded that his onl

intention was to take a "joy-ride", prosecution for larceny frequently failed. Vide Mr. Llewellyn-Jones book on the Road Traffic Law, page 116.

Onus :—In prosecutions under this section it will rest with the prosecution to prove the "taking and driving away" and if the defendant relies upon the qualifying words that he had "either the consent of the owner" of the vehicle "or other lawful authority," the onus of proving that will be upon him. It will, however, be advisable that the prosecution should in presenting their case, submit positive evidence that the defendant had neither the consent of the owner nor other lawful authority. Vide page 116, *Ibid*

Reasonable belief :—Reasonable belief means a belief based upon reasonable grounds, and the accused who pleads this defence will have to satisfy the Court upon this point. Vide page 116, *Ibid*.

127. Whoever otherwise than with lawful authority or reasonable excuse enters or mounts any stationary motor vehicle or tampers with the brake or any part of the mechanism of a motor vehicle shall be punishable with fine which may extend to one hundred rupees. Unauthorised interference with vehicle

Notes

Changes made by the Select Committee :—The penalty has been reduced from two hundred rupees to one hundred rupees.

English Law :—For English Law see section 29 of the Road Traffic Act, 1930, quoted under sec. 112 of this Act.

128. (1) A police officer in uniform may arrest without warrant any person who commits in his view an offence punishable under section 116 or section 117 or section 126 : Power of arrest without warrant.

Provided that any person so arrested in connection with an offence punishable under section 117 shall be subjected to a medical ex-

amination by a registered medical practitioner within two hours of his arrest or shall then be released from custody.

(2) A police officer in uniform may arrest without warrant—

(a) any person who being required under the provisions of this Act to give his name and address refuses to do so, or gives a name or address which the police officer has reason to believe to be false, or

(b) any person concerned in an offence under this Act or reasonably suspected to have been so concerned, if the police officer has reason to believe that he will abscond or otherwise avoid the service of a summons.

(3) A police officer arresting without warrant the driver of a motor vehicle shall, if the circumstances so require, take or cause to be taken any steps he may consider proper for the temporary disposal of the vehicle.

Notes.

Changes made by the Select Committee :—Sub-section (1).—The Select Committee confined the power of arrest without warrant given by this sub-section to cases in which a police officer sees an offence committed. Sub-clause (2) of the Bill has been omitted in consequence of the omission of clause 115 of the Bill. In sub-clause (3) of the Bill, which is now sub-section (2), the Select Committee has removed the power to arrest an offender who gives an address outside British India, and confined the power of arrest to cases in which there is an apprehension that the offender will not be available for trial.

In his view:—The words "in his view" mean "in his presence" or "within sight of him" and not "in his opinion." *Abdul Aziz v. Emp*, A. I. R. 1933 Pat. 508 (511) = 14 P. L. T. 464 = 1933 Cr C 1079; *Gokul Tatwa v. Emp*, 26 Cr. L. J. 1462 (1463) = 89 I. C. 1030 = 7 P. L. T. 65 = A. I. R. 1926 Pat. 53.

English Law:—See sub section (4) of section 15, sub-section (2) of section 20 and sub-section (3) of section 28 of the Road Traffic Act, 1930, which have been inserted respectively under sections 112, 87 and 126 of this Act.

Power of police officer to impound documen

129. (1) Any police officer authorised in this behalf or other person authorised in this behalf by the Provincial Government may, if he has reason to believe that any identification mark carried on a motor vehicle or any licence, permit, certificate of registration, certificate of insurance or other document produced to him by the driver or person in charge of a motor vehicle is a false document within the meaning of section 464 of the Indian Penal Code, seize the mark or document and call upon the driver or owner of the vehicle to account for his possession of or the presence in the vehicle of such mark or document. XLV of 1860.

(2) Any police officer authorised in this behalf by the Provincial Government may, if he has reason to believe that the driver of a motor vehicle who is charged with any offence under this Act may abscond or otherwise avoid the service of summons, seize any licence held by such driver and forward it to the Court taking cognizance of the offence.

(3) A police officer seizing a licence under sub-section (2) shall give to the person surrendering the licence a temporary acknowledgment therefor and such acknowledgment shall authorise the holder

to drive until the licence has been returned to him or the Court has otherwise ordered.

Notes.

Notes on Clauses :—**Sub-section** (2)—has been introduced as much difficulty is encountered in getting offenders to comply with the summons served on them.

Changes made by the Select Committee :—A misprint is corrected.

Old Clause 130 of the Bill —The Select Committee omitted the clause as unnecessary.

Summary disposal of cases.

130. (1) A Court taking cognizance of an offence, under this Act may, unless the offence is an offence specified in Part A of the Fifth Schedule, state upon the summons to be served on the accused person that he—

(a) may appear by pleader and not in person, or

(b) may by a specified date prior to the hearing of the charge plead guilty to the charge by registered letter and remit to the Court such sum not exceeding twenty-five rupees as the Court may specify.

(2) Where the offence dealt with in accordance with sub-section (1) is an offence specified in Part B of the Fifth Schedule, the accused person shall, if he pleads guilty to the charge, forward his licence to the Court with the letter containing his plea in order that the conviction may be endorsed on the licence.

(3) Where an accused person pleads guilty and remits the sum specified and has complied with the provisions of sub-section (2), no further proceedings in res-

pect of the offence shall be taken against him, nor shall he be liable to be disqualified for holding or obtaining a licence by reason of his having pleaded guilty.

Notes.

Notes on Clauses :—This provides for speedy action in technical prosecutions.

Changes made by the Select Committee :—The new sub-clause inserted as sub-section (2) is intended to secure the presentation of the driving licence to enable the Court to record the endorsement which is required by the Fifth Schedule and section 19 (2), although the convicted person is not himself required to attend.

131. No person prosecuted for an offence punishable under section 115 or section 116 shall be convicted unless— Restriction on conviction.

(a) he was warned at the time the offence was committed that the question of prosecuting him would be taken into consideration, or

(b) within fourteen days from the commision of the offence, a notice specifying the nature of the offence and the time and place where it is alleged to have been committed was served on or sent by registered post to him or the person registered as the owner of the vehicle at the time of the commission of the offence, or

(c) within twenty-eight days of the commission of the offence, a summons for the offence was served on him :

Provided that nothing in this section

shall apply where the Court is satisfied that—

(a) the failure to serve the notice or summons referred to in this subsection was due to the fact that neither the name and address of the accused nor the name and address of the registered owner of the vehicle could with reasonable diligence have been ascertained in time, or

(b) such failure was brought about by the conduct of the accused.

Notes.

Notes on Clauses.—This provision is reasonable in the interest of the motorist, to prevent him from being charged, after an unduly lengthy period, in connection with an alleged offence the circumstances of which may no longer be easily remembered.

Changes made by the Select Committee:—The omission of the reference to old clause 115 of the Bill is consequential. The Select Committee has omitted the clause which provided for a presumption that the provisions of the section had been complied with until the contrary was proved.

Clause (a):—It is not sufficient to comply with this requirement to warn a person that he will be reported, but he must be distinctly warned that the question of prosecuting him for an offence will be taken for consideration. See *Purles* v. *Cole* (1922), 127 L. T. 152; 86 J. P. 122; 20 L. G. R. 463. See also *Jessop* v. *Clarke* (1908) 99 L. T. 28; 72 J. P. 358 (quoted from page 105 of Mr. F. Llewellyn Jones's book on the Road Traffic Law).

Served on:—This seems to imply actual personal service on the accused or the registered owner of the vehicle. But see *Martin* v. *Brooman* (1909), 73 J. P. 481; 25 T. L. R. 753, where the Court held the handing of a notice to the porter of a block of flats, who was also told the purport of the notice, to be good service under the corresponding section of the

Motor Car Act, 1903 (quoted from page 106 of the above-mentioned book).

English Law :—Section 21 of the Road Traffic Act, 1930, which corresponds to this section, runs as follows —

21. Where a person is prosecuted for an offence under any of the provisions of this part of this Act relating respectively to the maximum speed at which motor vehicles may be driven, to reckless or dangerous driving, and to careless driving he shall not be convicted unless either— Restric on pros cutions under preced section

(a) he was warned at the time the offence was committed that the question of prosecuting him for an offence under some one or other of the provisions aforesaid would be taken into consideration ; or

(b) within fourteen days of the commission of the offence a summons for the offence was served on him , or

(c) within the said fourteen days a notice of the intended prosecution specifying the nature of the alleged offence and the time and place where it is alleged to have been committed was served on or sent by registered post to him or the person registered as the owner of the vehicle at the time of the commission of the defence :

Provided that—

(i) failure to comply with this requirement shall not be a bar to the conviction of the accused in any case where the court is satisfied that—

(1) neither the name and address of the accused nor the name and address of the registered owner of the vehicle, could with reasonable diligence have been ascertained in time for a summons to be served or for a notice to be served or sent as aforesaid , or

(2) the accused by his own conduct contributed to the failure ; and

(ii) the requirements of this section shall in every case be deemed to have been complied with unless and until the contrary is proved.

Jurisdiction of courts.

132. No Court inferior to that of a Presidency Magistrate or a Magistrate of the second class shall try any offence

punishable under this Act or any rule made thereunder.

Notes.

Analysis of the section :—This section bars a third class Magistrate in trying a case punishable under the Motor Vehicles Act or the rules made thereunder.

Ordinary place of inquiry or trial.

Place of enquiry and trial :—Section 177 of the Code of Criminal Procedure provides that every offence should ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed.

Accused triable in district where act is done or where consequence ensues.

When a person is accused of the commission of any offence by reason of anything which has been done, and of any consequence which has ensued, such offence may be inquired into or tried by a Court within the local limits of whose jurisdiction any such thing has been done, or any such consequence has ensued. (See 179 Cr. P. C.)

Place of inquiry or trial where scene of offence is uncertain or not in one district only or where offence is continuing or consists of several acts.

When it is uncertain in which of several local areas an offence was committed, or where an offence is committed partly in one local area and partly in another, or where an offence is a continuing one, and continues to be committed in more local areas than one, or where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas (Sec. 182 Cr. P. C.)

When a lorry is engaged for a journey from Calicut to Pollachi for hire, it is quite justifiable to say that the vehicle has been let for hire along the public roads in the Presidency of Madras in the Districts of Malabar and Coimbatore and, therefore, the offence for violating rule 30 (a) (1) (i) of the Madras Motor Vehicles Rules is committed in the District of Malabar as well as in the District of Coimbatore if the lorry gets beyond the limits of the District of Malabar on its journey to Pollachi. *Emp. v. Kuzhhal Krishnan*, 39 Cr. L. J. = 861 = 177 I. C. 311 = A. I. R. 1938 Mad. 713 = (1938) 1 M. L. J. 800 = 47 M. L. W. 771 = 1938 M. W. N. 822.

Summons :—Section 68 of the Criminal Procedure Code incorporates the form of summons, which is a statutory form contained in Sch. V of the Code, which summons is to be issued to accused persons. The statutory form provides that the summons should give as part of the requirement to the

accused person to attend at the specified time and place to answer a charge, particulars of the offence charged. It is not reasonable to summon a person to answer a charge, unless you, at the same time, inform him of the charge he is summoned to answer. That statutory requirement cannot be satisfied by a reference to a general omnibus clause, which may include a variety of charges nor does it justify the omission of the place where, the date when, and the precise nature of the offence which the accused person is supposed to have committed. A summons issued by a Magisterial Court, which does not contain in the form prescribed by the Statute particulars of the place where, the time when, and the nature of the offence charged, may be disregarded by the person summoned, and proceedings taken thereon, if objected to, must necessarily be invalid. In a case of this kind, or any case under the Motor Vehicles Act, where there are a variety of offences included either in one section, or in a code of rules, it is essential both for the purposes of the proper conduct of the Court business itself, as well as for the protection of a respectable class of people summoned for sometimes trivial and sometimes serious offences, that it should be known from the first what it is which the Court has in fact to deal with *Emp.* vs *Ranarjai Singh*, 29 Cr L J 357 (359) = 108 I C. 203 = 26 A. L J 331 = A I. R 1928 All 261 = I L. T 40 All. 102 ; *Hasan Ahmad* vs *Emp* 29 Cr L J 799 = A I. R. 1928 All 492 = 111 I C. 127 = 50 All 876 = 26 A L J 1381. Section 16 of Act VIII of 1914 (which now corresponds to section 112 of the new Act) applies to all contraventions of the provisions of the Act or of the rules made thereunder so that a mere reference to that section in the summons can give absolutely no idea to the accused of the exact nature of the offence with which he is being charged. Where in cases of breach of rule 131 and rule 87, first part, of the Motor Vehicles Rules, the summonses, issued to the accused only mentioned Sec. 16 of the Motor Vehicles Act (VIII of 1914) as the section under which the accused was to appear and answer a charge and no particulars of the charge were given in the summonses nor were the rules for the breach of which the prosecutions were launched, mentioned, the conviction following the trial on such charge should be set aside. *Emp.* vs. *Maiku Lal*, 38 Cr. L. J. 326 = 166 I. C. 978 = 1937 O W.N. 283 = 1937 O. L. J. 79 ; *Lal Chand* vs. *Emp.*, 11 O W.N. 828 = 150 I. C. 911 = 35 Cr. L. J. 1161 = A. I. R. 1934 Oudh 370 = 1934 Cr. C. 1156. It is the duty of the clerk who issues the sum-

mons under the Motor Vehicles Act to define therein the exact nature of the charge which is being preferred against the person against whom the summons is being issued. The time, the place and the exact nature of the offence charged must be clearly set forth. If this is not done and in the summons issued to the accused he is charged merely with an offence under Sec. 16 of Act VIII of 1914, the clerk issuing the summons is guilty of gross breach of duty. A conviction which follows upon a summons in which the accused is not given notice of the charge which is brought against him is an illegal conviction. *Gajraj Singh* vs. *Emp* A. I. R. 1936 All. 761 = 38 Cr L. J. 69 = 165 I. C. 716 = 1936 All. L. R. 932 = 1936 Cr. C 1002 = 1936 A. L. J. 1011 = 1936 A. W. R. 874. Summons issued to an accused for an offence under the Motor Vehicles Act must specify the rule or rules made under the Act, which the accused is said to have broken and unless this is done, the trial is bad. It is extremely unfair to the accused that a prosecution should be launched against him without the prosecution having made up their mind as to the exact offence with which it is intended to charge him. *Mohammad Hafiz* vs. *Emp*, 38 Cr. L. J. 947 = 170 I. C. 476 = 1937 O. L. R. 432 = 1937 O. W. N. 815 = A. I. R. 1937 Oudh 444 These rulings apply with equal force to cases under Section 112 of this Act.

Reviewing the rulings quoted above the Oudh Chief Court has held that when an accused has attended Court on a defective summons his trial is not vitiated by reason of that defect. An omission in the summons cannot by itself vitiate a trial. The trial can only be vitiated by a defect in the proceedings at the trial by which the accused is prejudiced. The provisions of s. 537, Cr. P. C., are perfectly clear and applicable. The question whether the accused has been prejudiced or not should be the sole criterion in such cases. *Emp.* v. *Abdul*, 41 Cr. L. J. 92, 184 I. C. 742, 1939 O. W. N. 900, following *Muhammad Sadiq* v. *Delhi Electric Supply & Traction Co.*, A. I. R. 1929 Lah. 867, 116 I. C. 889, 30 Cr. L. J. 702, 1929 Cr. C. 601, Ind. Rul. 1929 Cal. 601.

Where the accused knew full well what the charge he would have to meet was but there was a mistake in the number of sections of the Act, the accused cannot be said to have in any way been prejudiced thereby and his conviction is not invalidated on that account. *H. B. Spiers* vs. *Johuddin*, 33 Cr. L. J. 549 = 138 I. C. 98 = A. I. R. 1932 Cal. 461 = 56 C. W.

N. 246=59 Cal. 113=Ind. Rul. 1932 Cal 419=1932 Cr. C. 451.

Joint trial :—The offence committed by each person is his own offence and he should be tried separately for it. If both the owner and the driver had committed the offence in respect of a single journey, there is no objection to the joint trial of those two, but it is very objectionable that several owners and several drivers should be tried in one trial for several offences committed on different dates *Emp. vs. Kuzhi-lal Krishnan*, 39 Cr L. J. 861=177 I. C 314=A. I. R 1938 Mad. 743=(1938) 1 M. L J. 800=47 M. L. W 774=1938 M. W. N. 822

Separate trial—Autrefois Acquit :—It has been held in the case of *Maksudan Mistry* vs *King. Emp*, 59 I. C. 207=22 Cr. L J. 63=A.I.R. 1921 Pat 108=1921 Pat. H.C C. 108, that a person who was acquitted of a charge under section 338 I P. C, cannot be tried again under section 16 of the Motor Vehicles Act (VIII of 1914) upon same facts as Sec 403 Cr P. C. is a bar to such trial. In the case in question the accused caused grievous hurt by driving rashly a motor vehicle and was prosecuted under section 338 I. P. C. It could not be proved that he was the person who drove the car at the time and therefore he was acquitted on appeal Subsequently the accused was prosecuted under section 16 of the Motor Vehicles Act (VIII of 1914), for driving the car without a licence A plea was raised under section 403 of the Code of Criminal Procedure. It was held that he could not be prosecuted under that section, But where the accused was convicted for breach of Rule 27 A, Bombay Motor Vehicles Rules and sentenced to pay a fine of Rs. 7 and, two days after, was again tried and convicted upon the same facts for an offence under section 5 of the Motor Vehicles Act (VIII of 1914) and sentenced to pay a fine of Rs. 25. *Held*, that the accused could, no doubt, have been tried at one trial for the two offences, as they were separate offences in one series of acts constituting the same transaction, so as to fall under Sub-Sec. (1) of sec. 235 Cr. P. Code, that a breach of the Rule 27-A would be committed the moment that the accused was driving the car in an intoxicated state and the act of rashness in regard to which he was convicted was a subsequent event and that there was nothing illegal in his being separately charged and tried for each of the two offences *Emp. vs. Rama Deoji*, 29 Cr. L. J. 981=112 I C. 101=30 Bom. L.R. 636=A.I R. 1928 Bom. 231.

The accused, a driver of a motor lorry, was once convicted of an offence under Sec. 5 of the Motor Vehicles Act VIII of 1914 for reckless driving. The reckless driving resulted in the lorry knocking against the *chabutra* on which one butcher was sitting and fracturing the bones of his left leg He was then being prosecuted under Sec. 279 I. P. C., for rash driving and causing grievous hurt by doing any act so rashly or negligently as to endanger human life and the personal safety of others. *Held,* that his conviction for rash driving could not protect him from prosecution for the consequences of such rash driving either under Sec. 325 or Sec. 338 I. P. C., and that the accused might be prosecuted under Sec 338 I P. C., but he could no longer be tried for an offence under Sec. 279 I. P. C, or any offence circumscribed by the rash driving. *Gur Narain* vs. *Emp*, 29 Cr. L. J. 271 = 107 I C 687 = 26 A. L J. 160 = A I. R. 1928 All. 191.

Offence covered by special as well as general law :—It cannot be laid down as a general rule of law that where there is a special law making a particular act an offence and providing penalties for such an offence, the general law must be held to be inapplicable. It is possible that the same act may be an offence under two different Acts, and both may be applicable simultaneously and the offender may be prosecuted and convicted under either Act. It may, however, be conceded that where the offence falls strictly within the provisions of a section of a special Act and does not go beyond it, it would be more appropriate to prosecute the offender and convict him under that special Act, rather than fall back upon a more general law which prescribes a heavier penalty. In such a case it may be assumed that the Legislature in prescribing the smaller penalty has considered recourse to the special law as the proper course. *Emp.* vs. *Jiwa Ram,* 33 Cr. L. J. 300 = 136 I. C. 571 = A. I. R. 1932 All. 69 = 1932 Cr. C 89 = Ind. Rul 1932 All. 219 = 1932 A. L J. 519, following *Joti Prosad Gupta* vs. *Emp*, 33 Cr. L. J. 236 = 53 All. 612 = A. I. R. 1932 All. 18 = 1931 A. L. J. 986 = 136 I. C. 91 and *Emp.* vs. *Ganesh Vaman Joshi,* 130 I. C. 25 = A. I. R. 1931 Bom. 140 = 32 Cr. L. J. 478 = 33 Bom. L R. 56 = Ind. Rul. 1931 Bom. 233 = 55 Bom. 353 = 1931 Cr. C. 188 and dissenting from *In re Oudh Bar Association, Lucknow, Emp.* vs. *Mohan Lal Saksena,* 128 I. C. 221 = A. I R. 1930 Oudh 497 = 1930 Cr. C. 1161 = 32 Cr. L.J. 101 = 7 O.W.N. 895 = Ind. Rul. 1931 Oudh 29. But ordinarily it is desirable that when an act or omission is made

penal by two Acts, one general and the other special, the sentence should be passed under the special Act. *Kumud Prosad Mozumdar* v. *Emp*, 11 C. W. N 100, *Joti Prosad Gupta* v. *Emp*, supra. In any case he cannot be punished twice for the same act or omission which constitutes the offence. *Joti Prosad Gupta* v. *Emp.*, supra, *T. V. Govindaraja Mudaliar* v. *Emp.*, 1931 M. W N. 397; *W. C. Dutt* v. *Emp*, 34 Cr L. J. 1260 (1263) = 146 I. C 268 = A. I R 1933 Nag 177 = 1933 Cr. C. 690

Procedure Section 4, clause 1 sub-clause (v) of the Code of Criminal Procedure defines summons case as a case relating to an offence and not being a warrant case. Sub-clause (w) defines Warrant case as a case relating to an offence, punishable with death, transportation or imprisonment for a term exceeding six months The offences under the Motor Vehicles Act and the rules made thereunder are triable as a summons case except those under the latter part of sections 116 and 117 where an enhanced penalty is provided for a subsequent offence if committed within three years of the commission of a previous similar offence.

The following sections of the Criminal Procedure Code provide that certain procedure shall be observed by Magistrates in the trial of summons cases —

242. When the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him and he shall be asked if he has any cause to show why he should not be convicted, but it shall not be necessary to frame a formal charge. *Substance of accusation to be stated.*

243. If the accused admits that he has committed the offence of which he is accused, his admission shall be recorded as nearly as possible in the words used by him and if he shows no sufficient cause why he should not be convicted the Magistrate may convict him accordingly. *Conviction on admission of truth of accusation.*

244. (1) If the Magistrate does not convict the accused under the preceding section or if the accused does not make such admission the Magistrate shall proceed to hear the complainant (if any), and take all such evidence as may be produced in support of the prosecution, and also to hear the accused and take all such evidence as he produces in his defence. *Procedure where no such admission is made.*

Provided that the Magistrate shall not be bound to hear

any person as complainant in any case in which the complaint has been made by a Court.

(2) The Magistrate may, if he thinks fit, on the application of the complainant or accused, issue a summons, to any witness directing him to attend or to produce any document or other thing.

The Magistrate may, before summoning any witness on such application, require that his reasonable expenses, incurred in attending for the purposes of the trial be deposited in Court.

Acquittal.

215. (1) If the Magistrate upon taking the evidence referred to in section 244 and such further evidence (if any) as he may, of his own motion, cause to be produced and (if he thinks fit) examining the accused, finds the accused not guilty, he shall record an order of acquittal.

Sentence.

(2) Where the Magistrate does not proceed in accordance with the provisions of section 349 or section 562 he shall, if he finds the accused guilty, pass sentence upon him according to law.

Finding not limited by complaint or summons.

216. A Magistrate may under section 213 or section 215 convict the accused of any offence triable under this chapter which from the facts admitted or proved he appears to have committed whatever may be the nature of the complaint or summons.

Non-appearance of complainant.

217. If the summons has been issued on complaint, and upon the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks proper to adjourn the hearing of the case to some other day:

Provided that, where the complainant is a public servant and his personal attendance is not required, the Magistrate may dispense with his attendance, and proceed with the case.

Withdrawal of complaint.

218. If a complainant, at any time before a final order is passed in any case under this chapter, satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint the Magistrate may permit him to withdraw the same, and shall thereupon acquit the accused.

249. In any case instituted otherwise than upon complaint, a Presidency Magistrate, a Magistrate of the first class, or with the previous sanction of the District Magistrate, any other Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment either of acquittal or conviction and may thereupon release the accused

Power to stop proceedings when no complaint.

250. (1) If, in any case instituted upon complaint or upon information given to a police officer or to a Magistrate, one or more persons is or are accused before a Magistrate of any offence triable by a Magistrate, and the Magistrate by whom the case is heard discharges or acquits all or any of the accused and is of opinion that the accusation against them or any of them was false and either frivolous or vexatious the Magistrate may, by his order of discharge or acquittal if the person upon whose complaint or information the accusation was made is present, call upon him forthwith to show cause why he should not pay compensation to such accused or to each or any of such accused when there are more than one, or, if such person is not present, direct the issue of a summons to him to appear and show cause as aforesaid.

False, frivolous or vexatious accusations.

(2) The Magistrate shall record and consider any cause which such complainant or informant may show, and if he is satisfied that the accusation was false and either frivolous or vexatious may, for reasons to be recorded, direct that compensation to such amount not exceeding one hundred rupees or, if the Magistrate is a Magistrate of the third class, not exceeding fifty rupees, as he may determine, be paid by such complainant or informant to the accused or to each or any of them.

(2A) The Magistrate may, by the order directing payment of the compensation under sub section (2), further order that, in default of payment, the person ordered to pay such compensation shall suffer simple imprisonment for a period not exceeding thirty days.

(2B) When any person is imprisoned under sub-section 2A, the provisions of sections 68 and 69 of the Indian Penal Code shall, so far as may be, apply.

(2C) No person who has been directed to pay compensation under this section shall, by reason of such order, be ex-

empted from any civil or criminal liability in respect of the complaint made or information given by him.

Provided that any amount paid to an accused person under this section shall be taken into account in awarding compensation to such person in any subsequent civil suit relating to the same matter.

(3) A complainant or informant who has been ordered under sub-section (2) by a Magistrate of the second or third class to pay compensation or has been so ordered by any other Magistrate to pay compensation exceeding fifty rupees may appeal from the order, in so far as the order relates to the payment of the compensation, as if such complainant or informant had been convicted on a trial held by such Magistrate.

(4) Where an order for payment of compensation to an accused person is made in a case which is subject to appeal under sub-section (3), the compensation shall not be paid to him before the period allowed for the prosecution of the appeal has elapsed or, if an appeal is presented before the appeal has been decided and, where such order is made in a case which is not so subject to appeal, the compensation shall not be paid before the expiration of one month from the date of the order.

The following sections of the Criminal Procedure Code provide the procedure to be followed by Magistrates in the trial of warrant cases :—

Procedure in warrant cases.

251. The following procedure shall be observed by Magistrates in the trial of warrant cases.

Evidence for prosecution.

252. (1) When the accused appears or is brought before a Magistrate, such Magistrate shall proceed to hear the complainant (if any) and take all such evidence as may be produced in support of the prosecution :

Provided that the Magistrate shall not be bound to hear any person as complainant in any case in which the complaint is made by the Court.

(2) The Magistrate shall ascertain, from the complainant or otherwise, the names of any persons likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution, and shall summon to give evidence before himself such of them as he thinks necessary.

253 (1) If upon taking all the evidence referred to in section 252, and making such examination (if any) of the accused as the Magistrate thinks necessary, he finds that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

Discharge of accused

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

254. If, when such evidence and examination has been taken and made, or at any previous stage of the case, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try, and which in his opinion could be adequately punished by him, he shall frame in writing a charge against the accused

Charge to be framed when offence appears proved

255 (1) The charge shall then be read and explained to the accused, and he shall be asked whether he is guilty or has any defence to make.

Plea

(2) If the accused pleads guilty, the Magistrate shall record the plea, and may in his discretion convict him thereon.

255A. In a case where a previous conviction is charged under the provisions of section 221, sub-section (7), and the accused does not admit that he has been previously convicted as alleged in the charge, the Magistrate may, after he has convicted the said accused under section 255, sub-section (2), or section 258, take evidence in respect of the alleged conviction and shall record a finding thereon

Procedure in case of previous convictions

256. (1) If the accused refuses to plead, or does not plead, or claims to be tried, he shall be required to state at the commencement of the next hearing of the case or, if the Magistrate for reasons to be recorded in writing so thinks fit, forthwith, whether he wishes to cross-examine any, and, if so, which, of the witnesses for the prosecution whose evidence has been taken If he says he does so wish, the witnesses named by him shall be recalled and, after cross-examination and re-examination (if any), they shall be discharged. The evidence of any remaining witnesses for the prosecution shall next be taken, and after the cross-examination and re-examination (if

Defence.

any) they also shall be discharged. The accused shall then be called upon to enter upon his defence and to produce his evidence.

(2) If the accused puts in any written statement, the Magistrate shall file it with the record.

Process for compelling production of evidence at instance of accused.

257. (1) If the accused, after he has entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross-examination, or the production of any document or other things, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice. Such ground shall be recorded by him in writing.

Provided that when the accused has cross-examined or had the opportunity of cross-examining any witness after the charge is framed, the attendance of such witness shall not be compelled under this section unless the Magistrate is satisfied that it is necessary for the purposes of justice.

(2) The Magistrate may before summoning any witness on such application, require that his reasonable expenses incurred in attending for the purposes of the trial be deposited in Court

Acquittal.

258 (1) If in any case under this chapter in which a charge has been framed the Magistrate finds the accused not guilty, he shall record an order of acquittal.

Conviction.

(2) Where in any case under this Chapter the Magistrate does not proceed in accordance with the provisions of section 349 or section 562, he shall, if he finds the accused guilty, pass sentence upon him according to law.

Absence of complainant.

259. When the proceedings have been instituted upon complaint, and upon any day fixed for the hearing of the case the complainant is absent, and the offence may be lawfully compounded, or is not a cognizable offence, the Magistrate may, in his discretion, notwithstanding anything hereinbefore contained, at any time before the charge has been framed, discharge the accused.

Appeal :—The Select Committee added a new section, after this section, providing for an appeal against all sentences of

imprisonment and fine exceeding twenty-five rupees imposed under this Act with the object that the provisions of sections 411, 413 and 414 of the Code of Criminal Procedure might not deprive convicted persons of a right of appeal. This provision was deleted in the course of the debates in the Legislative Assembly to leave to the Courts to deal with cases and appeals in consonance with the procedure laid down in the Code of Criminal Procedure.

Under section 407 of the Code of Criminal Procedure any person convicted on a trial held by a Magistrate of the second class may appeal to the District Magistrate Any person convicted on a trial held by a District Magistrate or other Magistrate of the first class may appeal to the Court of Session except in cases in which a sentence of fine not exceeding rupees fifty only is passed (Vide sections 408 and 413 of the same Code).

Under section 411 of the same Code any person convicted on a trial held by a Presidency Magistrate may appeal to the High Court if the Magistrate has sentenced him to imprisonment for a term exceeding six months or to fine exceeding two hundred rupees.

There shall, however, be no appeal by a convicted person in any case tried summarily in which a Magistrate empowered to act under section 260 of the Code of Criminal Procedure passes a sentence of fine not exceeding two hundred rupees only. (Vide section 414 of the same Code).

See also notes given under sec. 17 and sec. 112.

Sec. 562 Cr. P. C.—Sub section (1A) of sec 562 Cr. P C., only applies to a certain limited class of cases such as theft and so on under the Indian Penal Code. Consequently it does not apply to an offence under a totally different Act such as the Motor Vehicles Act of 1914. The words of the sub-section are plain and effect must be given to them. So the Court cannot release a person accused of an offence under the Motor Vehicles Act after due admonition. *Emp.* v. *Pandu Ramji*, 27 Cr. L.J. 528=93 I. C. 992=28 Bom. L. R. 297=A. I. R. 1926 Bom. 230.

Sub-sec. (1) of sec. 562 Cr. P. C. is however expressed in general language and covers the case of conviction under any law.

Trivial offence :—The Magistrate must not encourage prosecution for trivial offences save and except the cases, where a previous warning has been given and that has been ignored or where a public safety has been endangered. *Mahamed Surty v. Emp.*, 25 Cr. L. J. 196=76 I. C. 564=2 Bur. L. J. 201=1 Rang. 600=A.I.R. 1924 Rang. 63.

Interpretation :—When two equally reasonable interpretations are possible, the penal provision should be so construed as not to place a burden on the subject. *Guranditta v. Emp.* 39 Cr. L.J. 970 (971)=177 I. C. 975=A. I. R. 1938 Lah. 691=40 P.L.R. 912.

CHAPTER X

Miscellaneous.

133. (1) Every power to make rules given by this Act is subject to the condition of the rules being made after previous publication — Publication and commencement of rules.

(2) All rules made under this Act shall be published in the official Gazette, and shall, unless some later date is appointed, come into force on the date of such publication.

(3) All rules made under this Act by the Central Government or by any Provincial Government shall be laid for not less than fourteen days before the Central or Provincial Legislature, as the case may be, as soon as possible after they are made, and shall be subject to such modifications as the Legislature may make during the session in which they are so laid.

Notes.

Changes made by the Select Committee :—The Select Committee has added sub-section (3) requiring rules made under this Act to be submitted to the Legislature concerned after they are made and has given to the Legislature power to modify them.

Clause 133 of the Bill appended to the Report of the Select Committee was deleted and clause 131 was declared *ultra vires* in the course of the debates in the Legislative Assembly.

134. (1) The Indian Motor Vehicles Act, 1914, is hereby repealed. — Repeal

VIII of 1914. *(2) Notwithstanding the repeal of the Indian Motor Vehicles Act, 1914, rules made by any Provincial Government under section 11 of that Act, other than rules prescribing the fees payable in respect of the grant or renewal of licences to drive motor vehicles, shall, whether or not they are consistent with this Act but subject to the provisions of sub-section (3) of this section, continue to be in force for a period of nine months from the commencement of this Act, unless before the expiry of that period they are cancelled by the Provincial Government by notification in the official Gazette.*

VIII of 1914. (3) Notwithstanding the repeal of the Indian Motor Vehicles Act. 1914, rules made or purporting to be made by a Provincial Government under sub-section (2) of section 11 of that Act, requiring or relating to the insurance of motor vehicles, being rules in force at the commencement of this Act, shall until Chapter VIII of this Act takes effect in the province, have effect as if enacted in this Act.

(4) Nothing contained in this Act shall until the expiry of a period of nine months from the commencement of this Act, operate to invalidate any provisions relating to the taxation of motor vehicles contained in any Provincial enactment or rules made thereunder in force at the commencement of this Act.

(5) While, under the provisions of sub-section (2), any rules made by a Provincial Government under section 11 of the Indian Motor Vehicles Act, 1914, continue to be in force—

(a) section 112 shall be construed as if

after the words "any rule made thereunder" there were inserted the words and figure "or of any rule made under the Indian Motor Vehicles Act, 1914 and continuing in force," and (b) section 113 shall be construed as if after the words "under this Act," wherever they occur, there were inserted the words and figure "or under any rule made under the Indian Motor Vehicles Act, 1914 and continuing in force."

Amendment:—Sub-section (2) has been substituted and sub-section (5) has been inserted in this section by sec. 3 of the Motor Vehicles (Amendment) Act, 1939 (Act XL of 1939).

Statement of objects and Reasons.—It was recognized when the Motor Vehicles Act 1914, was under discussion that Provincial Governments would require a considerable period of time to draft rules under the Act, and that as previous publication of rules was made obligatory, a further period of several months would have to elapse between the publication of draft rules and the promulgation of final rules. The object of section 134 (2) was to allow the rules made under the Act of 1914 to remain in operation for a time sufficient to enable the Provincial Governments to frame new rules and bring them into effect. But difficulties and doubts have arisen regarding the effect of this sub-section, when read with section 1 (3) Thus :—

(i) As section 134 (2) does not limit the operation of section 1 (3), it would seem to be obligatory upon Provincial Governments to set up Transport Authorities at once, i.e., before they are in a position to issue the rules on which these authorities depend for their working, and while rules designed to suit different methods of control are still in force.

(ii) It is doubtful whether the penal provisions in sections 112 and 113 of the present Act extend to contraventions of rules made under the Act of 1914 and

whether the repeal of the latter Act, including its penal provisions, does not prevent any penalty being imposed for breaches of rules made under it, except where the offences are specifically mentioned in Chapter IX of the new Act.

(iii) It is doubtful whether fees are to be levied as specified in sub-section (8) of section 7 and sub-section (3) of section 11 of the new Act in respect of the grant or renewal of a driving licence or according to the old rules.

2. Clause 2 of the Bill (i.e., section 2 of Act XL of 1939) therefore seeks to meet the difficulties by relieving Provincial Governments of the obligation of setting up Transport Authorities before they have made rules which will enable these Authorities to operate effectively. The reference to section 38 is included because that section is also dependent on rules under the new Act for its operation. Clause 3 (i.e. section 134, sub-sections 2 and 5) seeks to remove the doubts which have arisen regarding the levy of fees and the imposition of penalties.

3. The opportunity has been taken to include some minor amendments. Clauses 4 and 5 are designed to make clear to applicants and medical practitioners the nature of the test to be applied for colour blindness. Clause 6 seeks to remedy an omission, and clause 7 to substitute a sign approved by the Transport Advisory Council as giving a clearer indication of what is intended than that in the Act.

Vide Part VI of the Calcutta Gazette dated 19. 10. 39, page 159.

(h) tractors,

(i) road-rollers,

(j) locomotives,

(k) a vehicle of a special type (description attached) constructed or adapted to be driven by me.

*Strike out whichever inapplicable.

II

Particulars to be furnished by the applicant.

1. Full name and name of father... ....

2. Permanent address . . ..

3. Temporary address .. ..

4. Age at date of application .. ..

5. Particulars of any licence previously held by applicant......... ....

... .

6. Particulars and date of every conviction which has been ordered to be endorsed on any license held by the applicant.

7. Have you been disqualified for obtaining a licence to drive? If so, for what reason?

8 Have you been subjected to a driving test as to your fitness or ability to drive a vehicle in respect of which a license to drive is applied for? If so, give date, testing authority and result of test.

III

Declaration as to physical fitness of applicant.

The applicant is required to answer "Yes" or "No" in the space provided opposite each question.

(a) Do you suffer from epilepsy, or from sudden attacks of disabling giddiness or fainting?

(b) Are you able to distinguish with each eye at a distance of 25 yards in good daylight (with glasses, if worn) a motor car number plate containing seven letters and figures?

(c) Have you lost either hand or feet or are you suffering from any defect in movement, control, or muscular power of either arm or leg?

(d) *Can you readily distinguish the pigmentary colours red and green?*

(e) *Do you suffer from night blindness?*

(f) Do you suffer from a defect of hearing?

(g) Do you suffer from any other disease or disability likely to cause your driving of a motor vehicle to be a source of danger to the public?*

---

* These italicised words have been substituted by section 4 of the Motor Vehicles (Amendment) Act, 1939 (Act XL of 1939).

If so, give particulars

I declare that to the best of my information and belief the particulars given in Section II and the declaration made in Section III hereof are true.

NOTE.—An applicant who answers "Yes" to questions (b) and (c) in the declaration and "No" to the other questions may claim to be subjected to a test as to his competency to drive vehicles of a specified type or types.

Date. .. . ... 19 . *Signature or Thumb Impression of applicant.*

Certificate of test of ability to drive.

The applicant has $\frac{\text{passed}}{\text{failed in}}$ the test specified in the Third Schedule to the Motor Vehicles Act, 1939. The test was conducted on a*
on (date).

Signature of Testing Authority.
Duplicate Signature or Thumb Impression of applicant.

FORM B.

[*See* section 11 (2).]

Form of application for renewal of driving licence.

I hereby apply for a renewal of the licence under the Motor Vehicles Act, 1939, which was issued to me on the... .... by....... ....(state title of licensing authority).

I hereby declare that I am not subject to any disease or disability likely to cause my driving of a motor vehicle to be a source of danger to the public.

Date........................ ...19 . *Signature of Applicant.*

FORM C.

[*See* sec. 7 (3) and section 12.]

Form of medical certificate in respect of an applicant for a licence to drive any transport vehicle or to drive any vehicle as a paid employee.

(To be filled up by a registered medical practitioner.)

1. What is the applicant's apparent age? ....

* Here enter description of vehicle.

2. Is the applicant, to the best of your judgment, subject to epilepsy, vertigo or any mental ailment likely to affect his efficiency? ....
3. Does the applicant suffer from any heart or lung disorder which might interfere with the performance of his duties as a driver? ....
4 (a) Is there any defect of vision? If so, has it been corrected by suitable spectacles? ....
(b) *Can the applicant readily distinguish the pigmentary colours red and green?* ....
(c) *Does the applicant suffer from night blindnes?* ....
(d) Does the applicant suffer from a degree of deafness which would prevent his hearing the ordinary sound signals? ....
5. Has the applicant any deformity or loss of members which would interfere with the efficient performance of his duties as a driver? ....
6. Does he show any evidence of being addicted to the excessive use of alcohol, tobacco or drugs? ....
7. Is he, in your opinion, generally fit as regards (a) bodily health, and (b) eyesight? ....
8. Marks of identification

I certify that to the best of my knowledge and belief the applicant.............................is the person hereinabove described, and that the attached photograph is a reasonably correct likeness.

(Signature)..........................

[Space for photograph]

Name..........................

Designation..........................

NOTE —Special attention should be directed to distant vision and to the condition of the arms and hands and the joints of both extremities.

* These italicised words have been substituted by section 4 of the Motor Vehicles (Amendment) Act, 1939 (Act XL of 1939).

FORM D.

[*See* section 8 (*1*)]

Driving Licence

No . . 19... .

(Name). . ...

son/daughter of (father's name) .. ..

of (permanent address) .. . .

(temporary address) . .. .

Photograph if necessary	*Signature or thumb impression*

is licensed to drive, throughout British India, vehicles of the following description —*

(*a*) Motor cycle
(*b*) Motor car.
(*c*) Motor cab.
(*d*) Delivery van
(*e*) Light transport vehicle
(*f*) Heavy transport vehicle.
(*g*) Locomotive.
(*h*) Tractor.
(*i*) Invalid carriage.
(*j*) Road-roller.
(*k*) A motor vehicle hereunder described :—

....

He is also authorised to drive as a paid employee*.

This licence is valid from.. ....to............................ ..

(*To be struck out if inapplicable.)

Signature and designation of Licensing Authority.

Date...... ....19 .

Authorisation to drive a public service vehicle.

So long as this licence is valid and is renewed from time to time, the holder is authorised to drive a public service vehicle within the province of.............

Signature and designation of prescribed authority

Date ....19 .

And within the province of . ...

Date ... .19 . *Signature and designation of prescribed authority.*

And within the province of. ....

Date ... .. . 19 . *Signature and designation of prescribed authority.*

This licence is hereby renewed up to *Signature of Licensing Authority*

the . .. . day of ....19 . ...

the . day of. . . 19 . . . .

the . . day of .. 19 . ...

the . .. .. day of......19 . ...

the . . day of . ..19 . ...

ENDORSEMENTS

Date.	Section and Rule	Fine or other punishment.	Signature of Endorsing Authority.

FORM E.

[*See* section 24 (*1*).]

Form of application for the Registration of a Motor Vehicle

1 Full name, name of father, and address of person to be registered as registered owner... ....
2. Class of vehicle . .. .
3. Type of body.. ....
4. Maker's name. ....
5. Year of manufacture... .. ..
6. Number of cylinders..... ...., ...
7. Horse power.... ....
8. Maker's classification or, if not known, wheel-base .. ..
9 Chassis number ....
10. Engine number.. ....
11. Seating capacity (including driver)...... . ...

12 Unladen weight .. . .
13 Particulars of previous registration and
registered number (if any).... ....
Additional particulars to be completed only in the case of transport vehicle other than motor cabs—
14. Number, description and size of tyres—
(a) front axle ....
(b) rear axle ....
(c) any other axle . ...
15. Maximum laden weight..... . . ..lbs.
16 Maximum axle weight—
(a) front axle. ....lbs.
(b) rear axle... ... . lbs.
(c) any other axle .... lbs.

The above particulars are to be filled in for a rigid frame motor vehicle of two or of three axles, for an articulated vehicle of three axles, or, to the exten-applicable, for a trailer (other than the trailer to be registered as part of an articulated vehicle) as the case may be. Where a second trailer or additional trailers are to be registered with an articulated motor vehicle, the following particulars are to be furnished for each such trailer :—

17. Type of body..... ....
18. Unladen weight.... ....
19. Number, description and size of tyres on the axle... .
20. Maximum axle weight.................. ....

Date .... 19 . *Signature of applicant.*

Explanation —An articulated vehicle means a tractor to which a trailer is attached in such a manner that part of the trailer is superimposed on and part of the weight of the trailer is borne by the tractor.

Note.—The motor vehicle above described is held by the person to be registered as the registered owner, under a hire purchase agreement with ....

Signature of owner.
Signature of Hire Purchase Company.

FORM F.

[*See* section 33 (*I*)]

Document to be furnished by the maker or authorised assembler in the case of transport vehicles other than motor cabs.

Certified that the ....vehicle, Chassis No .... and Engine No ....is designed for maximum

And within the province of .. ..

Date . . ..19 . *Signature and designation of prescribed authority.*

And within the province of .. ..

Date . ... 19 . *Signature and designation of prescribed authority.*

This licence is hereby renewed up to	*Signature of Licensing Authority*
the ..... day of 19	....
the . day of. . ..19 .	....
the . . day of .....19 .	... .
the . . . . day of..... 19 .	.. ..
the .. .day of... ..19 .	....

ENDORSEMENTS

Date.	Section and Rule	Fine or other punishment.	Signature of Endorsing Authority.

FORM E.

[*See* section 24 (*1*).]

Form of application for the Registration of a Motor Vehicle.

1. Full name, name of father, and address of person to be registered as registered owner..................... ....
2. Class of vehicle... ....
3. Type of body... . ...
4 Maker's name .. ..
5. Year of manufacture .. ..
6. Number of cylinders .. ..
7. Horse power......... ....
8. Maker's classification or, if not known, wheel-base. ... .
9 Chassis number...... . ...
10. Engine number.. ....
11 Seating capacity (including driver)......... ....

12. Unladen weight . . . .
13. Particulars of previous registration and registered number (if any).... . ...

Additional particulars to be completed only in the case of transport vehicle other than motor cabs—

14. Number, description and size of tyres—
    (a) front axle ....
    (b) rear axle ....
    (c) any other axle . ...
15 Maximum laden weight... . ...lbs.
16. Maximum axle weight—
    (a) front axle.. .... lbs.
    (b) rear axle... . ... lbs.
    (c) any other axle .... lbs.

The above particulars are to be filled in for a rigid frame motor vehicle *of two or of three axles, for an articulated vehicle of three axles, or, to* the exten-applicable, for a trailer (other than the trailer to be registered as part of an articulated vehicle) as the case may be. Where a second trailer or additional trailers are to be registered with an articulated motor vehicle, the following particulars are to be furnished for each such trailer :—

17. Type of body......... ....
18. Unladen weight ....
19. Number, description and size of tyres on the axle... ..
20. Maximum axle weight..... ....

Date ....19 . *Signature of applicant.*

Explanation.—An articulated vehicle means a tractor to which a trailer is attached in such a manner that part of the trailer is superimposed on and part of the weight of the trailer is borne by the tractor.

Note.—The motor vehicle above described is held by the person to be registered as the registered owner, under a hire purchase agreement with .....

Signature of owner.
Signature of Hire Purchase Company.

FORM F.

[*See* section 33 (*l*).]

Document to be furnished by the maker or authorised assembler in the case of transport vehicles other than motor cabs.

Certified that the ....vehicle, Chassis No ... . .and Engine No ....is designed for maximum

weights as follows when fitted with the tyre-equipment specified below .—

Maximum laden weight...... .... lbs.
Maximum weight front axle ....lbs.
Maximum weight rear axle ....lbs.
Maximum weight any other axle . .. lbs.

Tyres—

Front wheels ....
Rear wheels .. ..
Other wheels .. ..
... .
. ...

Date . ... *Signature of maker or authorised assembler.*

Special certificate to be furnished by an assembler.

Certified that I am authorised by the maker of the vehicle described above to issue this certificate.

Signature of authorised assembler.

FORM G.

[*See* section 24 (2)]

Form of Certificate of Registration.

Registered number...... ....
Brief description of vehicle,
(*e.g.*, Ford touring car, Chevrolet 22 seater bus, Albion lorry, trailer etc.)
Name, name of father, and address of Registered Owner .. ..
....

Signature of registering authority.

Transferred to

Signature of registering authority.

Transferred to

Signature of registering authority.

Detailed description.

1. Class of vehicle ... .
2. Maker's name.............. . . ..
3. Type of body........... ....
4. Year of manufacture............ ....

5 Number of cylinders . ...
6 Chassis number .. ..
7. Engine number . ...
8. Horse power . . ..
9. Maker's classification or, if not known, wheel-base ....
10 Seating capacity (including driver) ... ...
11 Unladen weight... .. . .

Additional particulars in the case of all transport vehicles other than motor cabs—

12. Registered laden weight........ .. . .
13. Number, description and size of tyres—
  (a) front axle .. ..
  (b) rear axle....... ....
  (c) any other axle ....
14. Registered axle weight—
  (a) front axle. .... lbs.
  (b) rear axle........... . ...lbs.
  (c) any other axle .... lbs.

Additional particulars of alternative or additional trailer or trailers registered with an articulated vehicle—

15. Type of body.................................... .. ..
16 Unladen weight. .. ..lbs. ... .
17. Number, description and size of tyres on the axle................... .. .
18. Registered axle weight.......... . . .lbs.

Date ....'.......19 . *Signature of registering authority.*

NOTE—The motor vehicle above described is held by the person registered as the registered owner under a hire purchase agreement with.........

Date .... *Signature of Registering authority.*

FORM H.

[*See* sections 38 and 39 *(2)*.]

Certificate of fitness (applicable in the case of transport vehicles only)

. Vehicle No ....is certified as complying with the provisions of Chapter V of the Motor Vehicles Act, 1939, and the rules made thereunder. This certificate will expire on ....

Date .... .19 . *Signature and Designation of Inspecting Authority.*

The certificate of fitness is hereby renewed—

up to .. ..19 . ...
up to .. .. 19 . ...
up to ... . .19 . ...

Signature of Inspecting Authority.

THE SECOND SCHEDULE.

[*See* section 7 (5).]

I. DISEASES AND DISABILITIES ABSOLUTELY DISQUALIFYING A PERSON FOR OBTAINING A LICENCE TO DRIVE A MOTOR VEHICLE.

1. Epilepsy.
2. Lunacy.
3. Heart disease likely to produce sudden attacks of giddiness or fainting.
4. Inability to distinguish with each eye at a distance of twenty-five yards in good day light (with the aid of glasses, if worn) a series of seven letters and figures in white on a back ground of the same size and arrangement as those of the registration mark of a motor car.
5. A degree of deafness which prevents the applicant from hearing the ordinary sound signals.
6. *Inability readily to distinguish the pigmentary colours red and green.**
7. Night-blindness.

II. DISEASES AND DISABILITIES ABSOLUTELY DISQUALIFYING A PERSON FOR OBTAINING A LICENCE TO DRIVE A PUBLIC SERVICE VEHICLE.

1. Leprosy.

THE THIRD SCHEDULE.

[*See* sections 7 (6) (*a*) and 17 (6).]

TEST OF COMPETENCE TO DRIVE.

Part I.

The candidate shall satisfy the person conducting the test that he is able to—

1. Start the engine of the vehicle.
2. Move away straight ahead or at an angle
3. Overtake, meet or cover the path of other vehicles and take an appropriate course.
4. Turn right and left corners correctly.
5. Stop the vehicle in an emergency and normally, and in the latter case bring it to rest at an appropriate part of the road.
6. Drive the vehicle backwards and whilst so doing enter a limited opening either to the right or left.
7. *Cause the vehicle to face in the opposite direction by means of forward and reverse gears.*
8. Give by hand and by mechanical means (if fitted to the vehicle), or, in the case of a disabled driver for whom it is impracticable or

* These italicised words have been substituted by section 5 of the Motor Vehicles (Amendment) Act, 1939 (Act XL of 1939).

undesirable to give signals by hand, by mechanical means, in a clear and unmistakable manner, appropriate signals at appropriate times to indicate his intended actions.

9. Act correctly and promptly on all signals given by traffic signs and traffic controllers, and take appropriate action on signs given by other road users

NOTE.—(i) Requirements 6 and 7 are not applicable in the case of a motor cycle or tricycle not equipped with means for reversing.

(ii) Requirements 6, 7 and 8 are not applicable in the case of invalid carriages.

Part II

The candidate shall satisfy the person conducting the test that he is cognizant of the provisions of section 81, 82, 83, 84 and 85 and of the Tenth Schedule; that he knows the meaning of the traffic signs specified in the Ninth Schedule; and, if he has not been medically examined, that he is not so deaf as to be unable to hear the ordinary sound signals, and is able to distinguish with each eye at a distance of twenty five yards in good day light (with the aid of glasses, if worn) a registration mark containing seven letters and figures.

THE FOURTH SCHEDULE

[*See* sections 14 (*1*) and 39 (*1*) and (*3*).]

AUTHORITIES ENTITLED TO GRANT LICENCES TO DRIVE, AND TO REGISTER MOTOR VEHICLES, THE PROPERTY OF THE CENTRAL GOVERNMENT, AND REGISTRATION MARKS FOR SUCH VEHICLES.

Part A.

The authorities specified in the second column may grant licences in respect of vehicles, the property of the Department of the Central Government specified in the first column.

Defence Department of the Central Government.	1. District Commanders. 2. Commanders of independent brigades. 3. Officers commanding units having mechanically propelled vehicles in their charge. 4. Commanders, Royal Engineers.

Part B.

The authorities specified in the second column may register motor vehicles, the property of the Department of the Central Government

specified in the first column, and may grant certificates of fitness in respect of such vehicles.

Defence Department of the Central Government	The Master General of the Ordnance in India.

Part C

Registration marks for vehicles registered under section 39

A broad arrow above two figures representing the last two figures of the year of purchase of the vehicle followed by not more than four figures.

THE FIFTH SCHEDULE.

[*See* sections 19 (*2*) and (*3*) and 130.]

Offences on conviction of which an Endorsement shall be made on the Licence of the person affected.

Part A.

1 Driving recklessly or dangerously (section 116).
2. Driving while under the influence of drink or drugs (section 117).
3 Abetment of an offence under section 116 or 117 (section 119).
4 Taking part in unauthorised race or trial of speed (section 120).
5. Driving when disqualified (section 18).
6 Obtaining or applying for a licence without giving particulars of endorsement (section 114).
7. Failing to stop on the occurrence of an accident (section 87).
8. Altering a licence or using an altered licence.
9 Any offence punishable with imprisonment in the commission of which a motor vehicle was used.

Part B.

1. Driving without a licence, or without a licence which is effective, or without a licence applicable to the vehicle driven (section 3)
2. Allowing a licence to be used by another person [section 6 (2)].
3. Driving at excessive speed (section 115).
4. Driving when mentally or physically unfit to drive (section 118).
5. Abetment of an offence punishable under section 115 or 118.
6 Refusing or failing within specified time to produce licence (section 86)
7. Failing to stop when required (section 87)
8. Driving an unregistered vehicle (section 22).
9. Driving a transport vehicle not covered by a certificate of fitness (section 38).

10 Driving in contravention of any rule made under section 70 (2) (*g*) relating to speed governors.

11 Driving a vehicle exceeding the permissible limit of weight (section 124).

12 Failure to comply with a requisition made under section 73.

13 Using a vehicle in unsafe condition (section 121)

14 Driving a transport vehicle in contravention of section 42.

THE SIXTH SCHEDULE.

[*See* sections 24 (3) and 29 (2)]

Registration Marks.

One of the groups of letters specified in the second column followed by any one other letter shall be used as the registration mark for a vehicle in the province specified in the first column.

Assam	AS.
Bengal	BG, BL.
Bihar	BR.
Bombay	BM, BY.
Central Provinces and Berar.	CP.
Madras	MD, MS.
North-West Frontier Province	FP.
Orissa	OR.
Sind	KA.
Punjab	PB, PJ.
United Provinces . .	UP, US.
Ajmer-Merwara . .	AJ.
Andaman and Nicobar Islands	AN.*
Coorg	CG.
Delhi	DL.

Note—These letters shall be followed by not more than four figures, and the letters and figures shall be shown—

1. In the case of transport vehicles . . . In black on a white ground.
2. In the case of temporary registrations (section 23) . . . . . . In red on a yellow ground.
3. In the case of registration marks allotted to dealers [section 41 (2) (*k*)]. . . In white on a red ground.
4. In other cases . . . . . . In white on a black groun

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* These words have been inserted by section 6 of the Mottor V (Amendment) Act, 1939 (Act XI of 1939).

THE SEVENTH SCHEDULE.

[*See* section 37 (2).]

MAXIMUM AXLE WEIGHTS PERMISSIBLE FOR TRANSPORT VEHICLES.

Table A.

For each low pressure pneumatic tyre, fitted to a wheel on the axle, of a nominal size—	The permissible weight in pounds is—
5·00-17	980
5·25-17	1,060
5·25-18	1,100
5·50-17	1,140
5·50-18	1,195
5·50-20	1,225
6·00-16	1,200
6·00-17	1,350
6·00-18	1,450
6·00-20	1,550
6·25-16	1,300
6·50-16	1,400
6·50-17	1,550
6·50-18	1,700
6·50-20	1,850
7·00-15	1,500
7·00-16	1,675
7·00-17	1,850
7·00-18	2,050
7·00-20	2,200
7·50-15	1,700
7·50-16	2,050
7·50-17	2,150
7·50-18	2,450
7·50-20	2,650
7·50-24	2,650
8·25-18	2,900
8·25-20	3,100
8·25-22	3,100
8·25-24	3,100
9·00-15	2,650
9·00-18	3,300
9·00-20	3,550

For each low pressure pneumatic tyre, fitted to a wheel on the axle, of a nominal size—	The permissible weight in pounds is—
9·00-22	3,550
9·00-24	3,650
9·75-15	3,175
9·75-18	3,900
9·75-20	4,200
9·75-22	4,200
9·75-24	4,400
10·50-20	4,850
10·50-22	5,000
10·50-24	5,200
11·25-20	5,450
11·25-22	5,800
11·25-24	6,050

Table B.

For each high pressure pneumatic tyre, fitted to a wheel on the axle, of a nominal size—	The permissible weight in pounds is—
30 × 5	2,000
33 × 5	2,000
34 × 5	2,000
35 × 5	2,000
32 × 6	2,650
34 × 6	2,650
36 × 6	2,650
32 × 6½	2,950
32 × 7	3,000
34 × 7	3,300
36 × 7	3,300
38 × 7	3,300
36 × 8	4,000
38 × 8	4,200
40 × 8	4,400
38 × 9	4,850
40 × 9	5,100
42 × 9	5,300
40 × 10	5,700
44 × 10	6,150

THE SEVENTH SCHEDULE.

[*See* section 37 (2).]

MAXIMUM AXLE WEIGHTS PERMISSIBLE FOR TRANSPORT VEHICLES.

Table A.

For each low pressure pneumatic tyre, fitted to a wheel on the axle, of a nominal size—	The permissible weight in pounds is—
5·00-17	980
5·25-17	1,060
5·25-18	1,100
5·50-17	1,140
5·50-18	1,195
5·50-20	1,225
6·00-16	1,200
6·00-17	1,350
6·00-18	1,450
6·00-20	1,550
6·25-16	1,300
6·50-16	1,400
6·50-17	1,550
6·50-18	1,700
6·50-20	1,850
7·00-15	1,500
7·00-16	1,675
7·00-17	1,850
7·00-18	2,050
7·00-20	2,200
7·50-15	1,700
7·50-16	2,050
7·50-17	2,150
7·50-18	2,450
7·50-20	2,650
7·50-24	2,650
8·25-18	2,900
8·25-20	3,100
8·25-22	3,100
8·25-24	3,100
9·00-15	2,650
9·00-18	3,300
9·00-20	3,550

For each low pressure pneumatic tyre, fitted to a wheel on the axle, of a nominal size—	The permissible weight in pounds is—
9 00-22	3,550
9 00-24	3,650
9 75-15	3,175
9 75-18	3,900
9 75-20	4,200
9 75-22	4,200
9 75-24	4,400
10·50-20	4,850
10·50-22	5,000
10·50-24	5,200
11 25-20	5,450
11·25-22	5,800
11·25-24	6,050

Table B.

For each high pressure pneumatic tyre, fitted to a wheel on the axle, of a nominal size—	The permissible weight in pounds is—
30 × 5	2,000
33 × 5	2,000
34 × 5	2,000
35 × 5	2,000
32 × 6	2,650
34 × 6	2,650
36 × 6	2,650
32 × 6½	2,950
32 × 7	3,000
34 × 7	3,300
36 × 7	3,300
38 × 7	3,300
36 × 8	4,000
38 × 8	4,200
40 × 8	4 400
38 × 9	4,850
40 × 9	5,100
42 × 9	5,300
40 × 10	5,700
44 × 10	6,150

Explanation.—The figures "5·00-17", etc., in Table A represent, respectively, the nominal sectional diameter of the tyre and the diameter of the wheel rim; and the figures "30×5", etc., in Table B represent, respectively, the over-all diameter of wheel and tyre and the nominal sectional diameter of the tyre, all figures being in inches. The actual sectional diameter of the tyre when mounted on its appropriate rim and inflated shall in no case be less than the nominal sectional diameter.

Note—Tyres may be calibrated in so-called metric sizes, for example, "170×20". In that case the first number represents the sectional diameter of the tyre in millimetres and the second number represents the diameter of the rim in inches. The permissible weight in pounds for each such tyre shall be determined by dividing the nominal sectional diameter of the tyre in millimetres by the figure 25·4, the quotient being the nominal sectional diameter in inches. The permissible weight given in Table A for the nearest equivalent nominal sectional diameter in inches and the actual rim-diameter shall be the permissible weight for that tyre.

THE EIGHTH SCHEDULE.

(*See* section 71.)

Limits of Speed For Motor Vehicles

Class of vehicle.	Maximum speed per hour. *Miles.*
1. Passenger vehicles, that is to say, vehicles constructed solely for the carriage of passengers and their effects :—	
(*a*) if all the wheels are fitted with pneumatic tyres and the vehicle is not drawing a trailer —	
(*i*) if the vehicle is a motor cycle, motor car or motor cab	No limit.
(*ii*) if the vehicle is a public service vehicle other than a motor cab	30
(*b*) if the vehicle, being a motor car or motor cab, is drawing two-wheeled trailer of a laden weight not exceeding 1,700 pounds *avoirdupois*, and if all the wheels of the vehicle and trailer are fitted with pneumatic tyres .	30
(*c*) any other vehicle, including an invalid carriage	20
2. Goods vehicles, that is to say, vehicles constructed or adapted for use or used for the conveyance of goods —	
(*a*) if all the wheels are fitted with pneumatic tyres and the vehicle is a light transport vehicle and is not drawing a trailer .	25
(*b*) in any other case	15
3. Tractors :—	
(*a*) if drawing not more than one trailer and all the wheels of the tractor and trailer are fitted with pneumatic tyres ,	15
(*b*) in any other case .	6
4. *Locomotives, whether drawing a trailer or not*	6

THE NINTH SCHEDULE.

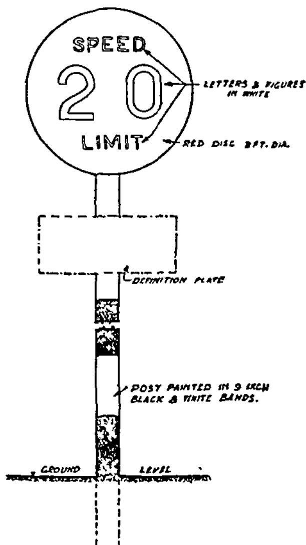
(*See* sections 75, 77 and 78.)

TRAFFIC SIGNS.

Part A.—Mandatory Signs.

NO. 1

SPEED LIMIT



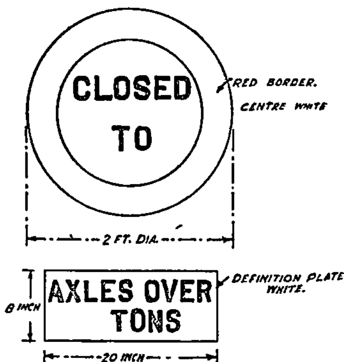
Note.—

(1) The figure 20 is given merely as an example. The actual figures will be as prescribed in each case where this sign is used.

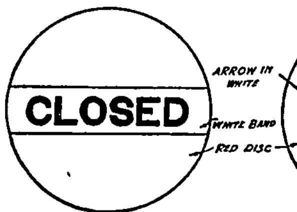
(2) The general design of the post is given for guidance

(3) Where the speed limit is, or is to be, imposed only on a certain class or classes of motor vehicle the class or classes will be specified on the "definition plate". Where in addition to a general speed limit applicable to other motor vehicles a special speed limit is, or is to be, imposed on vehicles of a certain class or classes, the general speed limit will be specified on the disc and the special speed limit together with the class or classes of vehicle to which it applies will be specified on the "definition plate".

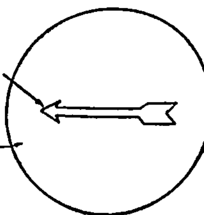
NO. 2
WEIGHT LIMIT

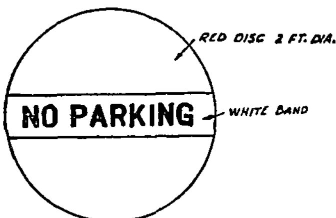


NO. 3
TOTAL PROHIBITION



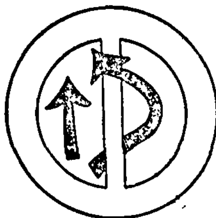
NO. 4
DIRECTION SIGN

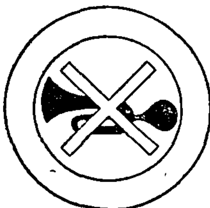




Note.—Sign No 5 as here set forth may be amplified by instructions inscribed upon a definition plate placed below it as in the

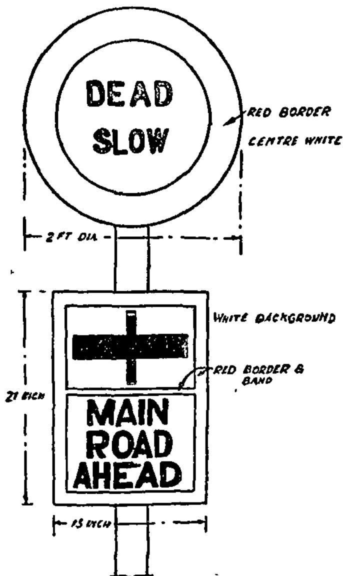
points





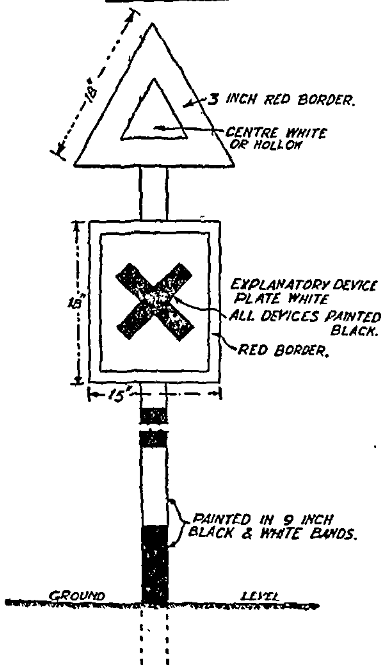
Cross and border—Red
Background—White
Device—Black."

These have been substituted by section 7 of the Motor Vehicles (Amendment) Act, 1939 (Act XL of 1939).

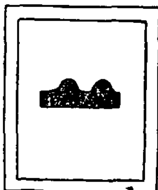

NO. 8
MAIN ROAD AHEAD
DEAD
SLOW
RED BORDER
CENTRE WHITE
2 FT DIA
WHITE BACKGROUND
RED BORDER & BAND
21 INCH
MAIN
ROAD
AHEAD
15 INCH

Part B.—Cautionary Signs.

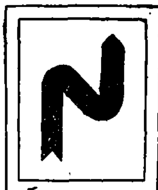
The signs of this Part shall be used in conjunction with a red tr angular plate, the centre of which shall be either hollow or paint white, in the manner indicated in the general design reproduc below.



NO. 1
ROUGH ROAD

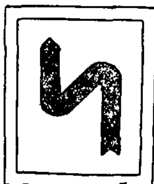


NO. 2
ZIG-ZAG (RIGHT)

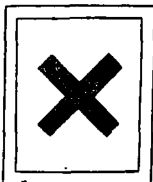


RED BORDER

NO. 2
ZIG-ZAG (LEFT)

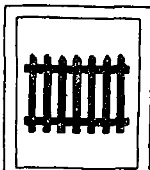


NO. 3
CROSS ROADS

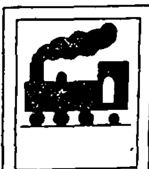


RED BORDER

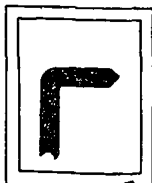
NO 4
LEVEL CROSSING
(GUARDED)



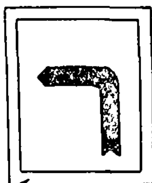
NO. 5
LEVEL CROSSING
(UNGUARDED)



NO. 6
RIGHT TURN



NO. 6
LEFT TURN

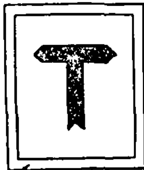


RED BORDER

NO. 7
SCHOOL

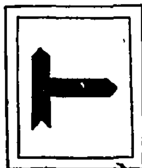


NO. 8
DEAD END CROSS ROAD

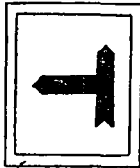


RED BORDER

NO. 9
SIDE ROAD (RIGHT)

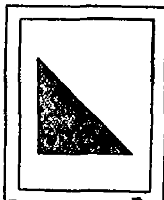


NO. 9
SIDE ROAD (LEFT)

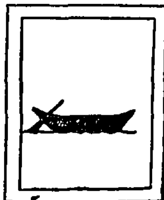


RED BORDER

NO. 10
STEEP HILL

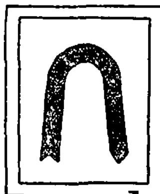


NO. 11
FERRY

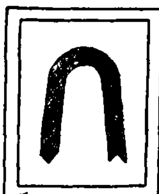


RED BORDER

NO. 12
HAIR PIN BEND (RIGHT)



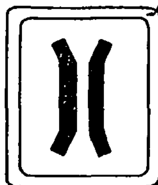
NO. 12
HAIR PIN BEND (LEFT)



RED BORDER

NO 13
NARROW BRIDGE

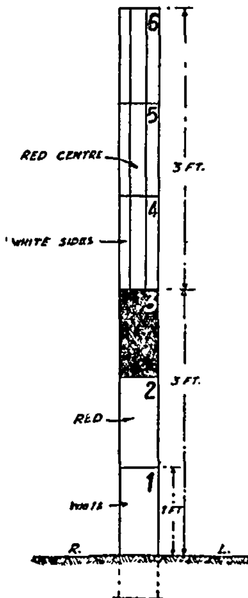
RED BORDER



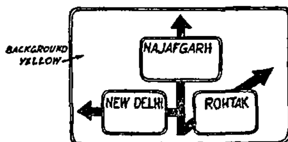
Part C.—Informatory Signs.

NO. 1
FLOOD GAUGE

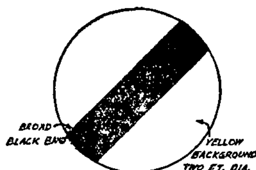
SIDE ELEVATION.



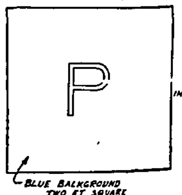
NO. 2
ROAD JUNCTION APPROACH.



NO. 3
END OF SPEED LIMIT.



NO. 4
PARKING SIGN.



THE TENTH SCHEDULE.

(*See* sections 77 and 78.)

DRIVING REGULATIONS.

1. The driver of a motor vehicle shall drive the vehicle as close to the left hand side of the road as may be expedient, and shall allow all traffic which is proceeding in the opposite direction to pass him on the right hand side.

2. Except as provided in regulation 3, the driver of a motor vehicle shall pass to the right of all traffic proceeding in the same direction as himself.

3. The driver of a motor vehicle may pass to the left of a vehicle the driver of which having indicated an intention to turn to the right has drawn to the centre of the road and may pass a tram car or other vehicle

running on fixed rails, whether travelling in the same direction as himself or otherwise, on either side :

Provided that in no case shall he pass a tram car at a time or in a manner likely to cause danger or inconvenience to other users of the road or pass on the left hand side a tram-car, which when in motion would be travelling in the same direction as himself, while the tram-car is at rest for the purpose of setting down or taking up passengers.

4. The driver of a motor vehicle shall not pass a vehicle travelling in the same direction as himself—

(a) if his passing is likely to cause inconvenience or danger to other traffic proceeding in any direction, or

(b) where a point or corner or a hill or an obstruction of any kind renders the road ahead not clearly visible.

5. The driver of a motor vehicle shall not, when being overtaken or being passed by another vehicle, increase speed or do anything in any way to prevent the other vehicle from passing him.

6. The driver of a motor vehicle shall slow down when approaching a road intersection, a road junction or a road corner, and shall not enter any such intersection or junction until he has become aware that he may do so without endangering the safety of persons thereon.

7. The driver of a motor vehicle shall on entering a road intersection, if the road entered is a main road designated as such, give way to the vehicles proceeding along that road, and in any other case give way to all traffic approaching the intersection on the right hand

8 The driver of a motor vehicle shall, when passing or meeting a procession or a body of troops or police on the march or when passing workmen engaged on road repair, drive at a speed not greater than fifteen miles an hour.

9. The driver of a motor vehicle shall—

(a) when turning to the left, drive as close as may be to the left hand side of the road from which he is making the turn and of the road which he is entering ;

(b) when turning to the right, draw as near as may be to the centre of the road along which he is travelling and cause the vehicle to move in such a manner that—

(i) as far as may be practicable it passes beyond, and so as to leave on the driver's right hand, a point formed by the intersection of the centre lines of the intersecting roads ; and

(ii) it arrives as near as may be at the left hand side of the road which the driver is entering.

THE ELEVENTH SCHEDULE.

(*See* section 79).

SIGNALS.

1. When about to turn to the right or to drive to the right hand side of the road in order to pass another vehicle or for any other purpose, a driver shall extend his right arm in a horizontal position outside of and to the right of his vehicle with the palm of the hand turned to the front.

2. When about to turn to the left or to drive to the left hand side of the road, a driver shall extend his right arm and rotate it in anti-clockwise direction.

3. When about to slow down, a driver shall extend his right arm with the palm downward and to the right of the vehicle and shall move the arm so extended up and down several times in such a manner that the signal can be seen by the driver of any vehicle which may be behind him.

4 When about to stop, a driver shall raise his right forearm vertically outside of and to the right of the vehicle, palm to the front.

5. When a driver wishes to indicate to the driver of a vehicle behind him that he desires that driver to overtake him, he shall extend his right arm and hand horizontally outside of and to the right of the vehicle and shall swing the arm backwards and forwards in a semi-circular motion.

APPENDIX A.

ACT No. XL OF 1939.

An Act to amend the Motor Vehicles Act, 1939, for certain purposes.

Received the assent of the Governor General on the 29th September, 1939.

WHEREAS it is expedient to amend the Motor Vehicles Act, 1939, for the purposes hereinafter appearing ;

IV of 1939.

It is hereby enacted as follows :—

Short title and commencement.

1. *(1)* This Act may be be called the Motor Vehicles (Amendment) Act, 1939.

(2) It shall come into force at once, but sections 2 and 3 shall be deemed to have taken effect on the 1st day of July, 1939.

Amendment of section 1 of Act IV of 1939.

2. In sub-section *(3)* of section 1 of the Motor Vehicles Act, 1939 (hereinafter referred to as the said Act), after the word "but" the following shall be inserted, namely :—

"section 38 and Chapter IV shall not have effect until the 1st day of April, 1940, or such earlier date as the Provincial Government may, by notification in the official Gazette, appoint, and".

Amendment of section 131.

3. In section 134 of the said Act,—

(a) for sub-section *(2)* the following sub-section shall be substituted, namely :—

"*(2)* Notwithstanding the repeal of the Indian Motor Vehicles Act, 1914, rules made by any Provincial Government under section 11 of that Act, other than rules prescribing the fees payable in respect of the grant or renewal of licences to drive motor vehicles, shall, whether or not they are consistent with this Act but subject to the provisions of sub-section *(3)* of this section, continue to be in force for a period of nine months from the commencement of this Act, unless before the expiry of that period they are cancelled by the Provincial Government by notification in the official Gazette." ;

(b) after sub-section *(4)* the following sub-section shall be inserted, namely :—

"*(5)* While, under the provisions of sub-section (2), any rules made by a Provincial Government under section 11 of the Indian Motor Vehicles Act, 1914, continue to be in force—

(a) section 112 shall be construed as if after the words "any rule made thereunder" there were inserted the words and figure "or of any rule made under the Indian *Motor Vehicles Act, 1914 and continuing in force*", and

(b) section 113 shall be construed as if after the words "under this Act", wherever they occur, there were inserted the words and figure "or under any rule made under the Indian Motor Vehicles Act, 1914 and continuing in force".

Amendment of First Schedule.

4 In the First Schedule to the said Act,—

(a) in Section III of Form A,—

(i) for question *(d)* the following questions shall be substituted, namely :—

"*(d)* Can you readily distinguish the pigmentary colours red and green ?

(e) Do you suffer from night blindness ?" ,

(ii) questions *(e)* and *(f)* shall be relettered as *(f)* and *(g)*, respectively ,

(b) in Form C, for question *(b)* in paragraph 4 the following question shall be substituted, namely .—

"*(b)* Can the applicant readily distinguish the pigmentary colours red and green ?

"*(c)* Does the applicant suffer from night blindness ?"

and question *(c)* shall be relettered as *(d)*.

Amendment of Second Schedule.

5. In Part I of the Second Schedule to the said Act, for item 6 the following item shall be substituted, namely :—

"Inability readily to distinguish the pigmentary colours red and green."

Amendment of Sixth Schedule.

6. In the Sixth Schedule to the said Act, after the entry relating to Ajmer-Merwara the following entry shall be inserted, namely :—

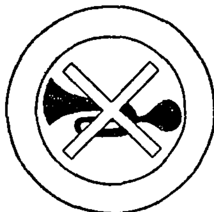
"Andaman and Nicobar Islands . . . . AN."

Amendment of Ninth Schedule.

7. In Part A of the Ninth Schedule to the said Act, for the entry relating to Sign No. 7 (including the

direction as to colour so far as it relates to Sign No. 7) the following entry shall be substituted, namely :—

"No. 7.
USE OF SOUND SIGNALS PROHIBITED.



Cross and border—Red
Background—White
Device—Black."

APPENDIX B.

TRIAL OF MOTOR CAR CASES.

FAILURE OF JUSTICE.

Preliminary observation.—In this country there occasions a failure of justice in motor car cases for more than one reasons. The materials upon which a court can pronounce a correct judgment were almost in all the cases found wanting. The High Court and the appellate courts are found powerless to interfere for want of sufficient materials. These materials could be supplied mostly by drivers who have expert knowledge. Drivers are accused persons but they could not be examined or cross-examined according to the law of the land. The cases are usually petty cases and neither prosecution nor the defence

could afford to examine any other expensive experts. I shall first of all, discuss what materials could be gathered from the examination of the drivers and then shall illustrate by producing a correct copy of the records of a case which was fought up to High Court.

Examination of Drivers.—After asking name, father's name, age, present occupation, and residence of the drivers you proceed to elucidate the experience which he has had of driving cars. Injuries, in many cases, result from his own want of experience. In this connection it must be ascertained the period he has been driving a vehicle before the occurrence—the total number of miles he has run, if he has any special knowledge regarding the machinery and if he be experienced to say something about the expert nature of matters which might arise for consideration on account of the occurrence in question. Regarding experience the questions regarding driver's licence whether it was endorsed or suspended in connection with previous cases might be determined. The peculiarity of the car being driven by an owner should be brought to light. The complexity of the owner's liability has already been discussed. Now it must be determined whether (*a*) the driver was the servant of the proprietor of the vehicle or (*b*) he was a member of the proprietor's family or (*c*) a bailee to whom the proprietor delivered possession of the vehicle or (*d*) a person who was permitted to drive by the proprietor's servant, relation or bailee or (*e*) he was a trespasser or thief.

After ascertaining who the driver was, the place, the date and time of the occurrence should be determined. The date is an important factor. If it be moonlit night or dark night—if it be a rainy day or a sunny day often require to be investigated in connection with these cases. The time also is not a minor matter *e.g.*, to decide whether lights were required—what is a reasonable speed depending on that part of day or night because of the congestion of traffic at certain hours.

The weather and atmospheric conditions should be next elucidated whether light required—whether road blocked by

accumulation of rain water and so on are required to be elucidated in many cases.

Then comes the vehicle itself. The kind of vehicle—*viz.*, its manufacture,—its size—its speed are to be considered in connection with the question whether the driver exercised proper care. The weight of the vehicle is also important. A heavy or a speedy vehicle endangers life and property more than a light or a slow one. A slow one can be easily kept close to the kerb. A motor vehicle must have (1) two independent brakes in such good working order as the application of either shall cause two of the wheels on the same axle to be so held that the wheels shall be prevented from revolving, (2) two lights (generally white) in the front and a red back light, (3) a horn capable of giving a warning of its approach. The condition and age of the vehicle are necessary in deciding as to the amount of damage done to it.

The next question to which one must be attracted is the question whether the vehicle was empty or there were passengers—if so, how many ? If there be no passenger a driver can pay more attention to the driving than if there are passengers on the vehicle. One must know how many passengers were there : who they were : how they came to be there : how were they placed. The relationship between any passenger and other or between a passenger and an owner or a passenger and driver must also be determined.

The next thing one must know as to what the passengers were doing at the time of occurrence. The passengers may be called upon to give evidence as eye-witnesses and as such eye witnesses the value of their evidence will depend upon their opportunities for observation.

If the vehicle be loaded—the question might arise as to the weight of the load—whether the load projects from the side of the vehicle and so on.

If the vehicle be over-crowded with passengers or overloaded with parcels—it might be that the drivers may not have full and free access to his brakes and steering wheels. In that case is the driver solely liable ?

Orders given to drivers by the owners of vehicle are sometimes not carried out. The questson whether the driver diverged from his proper route as indicated by the owner and violation of any other order should be investigated.

The purpose for which the vehicle was used at the time of the occurrence is also a pertinent fact.

It is occasionally required to know when the vehicle was started. If the exact time of starting be known—it can easily be determined as to what was the time when the occurrence took place by computing from the number of miles covered from the starting point to the place of occurrence.

Next is the description of the route the driver followed from the starting point till he arrived at the place of occurrence which is very important. This will show whether or not the driver followed a route not permitted by the authorities.

The next point is as to the permission granted by the proprietor of the vehicle. An owner cannot permit a driver of his to violate the salutory rules formed by the Local Government.

Then comes the question as to the condition of the road. Vehicles can move easily over smooth roads and more safely than over rough roads. The condition of the road will obstruct the Rule of the Road being observed and as such this is a pertinent question.

Next question is the width of the road. More care is wanted in case of running over a narrow road than upon a wide road.

Bend in a road is more dangerous running than in a straight road. One can easily keep to the left in case of a straight road where pedestrians can easily find the vehicle running. In crossing bends the drivers must strictly observe the Rules of the Road and warn every body by horn. During sunny day and in a straight road a vehicle need not necessarily keep to the left but at night and in a bend the Rule of the Road must be strictly observed. When an occurrence takes place the person whose vehicle is on the wrong side of the road is generally held responsible. Because the person on the wrong

side must use greater care. The violation of the Rule of the Road is not conclusive evidence of guilt but it shifts the onus upon the person who was on the wrong side In this country, this onus is rarely discharged. In the case, which I will cite later on as my Illustration of failure of justice in this country in motor car cases the onus was upon the driver shifted because he was found to be on the wrong side. He failed to discharge the onus because he being an accused person could not be examined as a witness in the case. This onus can be discharged by leading defence evidence—that the driver had to overtake a led horse—he had to come to a destination in a wrong side—there was a one-way traffic and so on. But a driver can commit a serious offence under I. P. C. without violating the *Rule of the Road. He* may be on the right side but that does not excuse him from committing a murder or a grievous hurt. In order to avoid such disaster if he had to violate the Rule of the Road, he must do it. In the case which will follow the driver avoided a serious disaster of the kind but unfortunately his conviction could not be prevented. When the driver of one vehicle observes that the driver of another is not obeying the rule of the road, he must not slavishly follow the Rule of the Road and cause an accident.

The question of dangerous speed is the next point. The question of speed is a question of relativity. In places where there are much crowd not only of vehicles but of pedestrians the speed must be as low as possible But in mufassil where the road is almost without anything upon it the driver should carry on with a far greater speed. The moderate speed in the outlying districts may be called dangerous in cities. If there is no obstruction to the view of the driver he can run at a great speed along an open highway.

A driver is not immune from punishment simply because he has committed the offence while obeying the directions from the Traffic Police Constable. The traffic police constables sometimes give wrong directions and cause a disaster. One must use proper care according to his own conscience for the safety of other road users.

I have already stated that if there be no obstruction to the view of the driver he can drive at a great speed along an open highway. But if there be obstruction by buildings, hedges, walls, alongside road, fogs etc., greater degree of care should be exercised. Because, the speed is sometimes proof of criminal negligence. It is ordinarily proof of driving skill, if no occurrence takes place. But if there be any accident, the speed is considered as an essential to substantiate the guilt of the accused. The proof, therefore, of the rate at which the vehicle was running at the time of occurrence is very important. But a witness who is a layman and does not know actually the rate generally states that the vehicle was running at a very great speed at the time. This sort of evidence seems to be worthless. The rate can be determined by comparison of the speed with the distance covered in a given time, *e.g.*, a *vehicle running at 15 miles per hour will cover 22½ feet per* second. It is the duty of every driver to run at a speed allowed by law. But he must lower it according to the exigencies of time and place. The driver must consider about the place where he is driving *viz.*, (a) whether it is a road crossing, bend or near a hospital etc., (*b*) whether it is a wide big road or whether the place is a crowded one etc., (*c*) whether it was a dark place etc., (*d*) whether the vehicle is noiseless or not etc.

The next point is the point regarding lights. When an occurrence takes place during darkness the question of light becomes the most prominent. The lights prescribed by law must be burning at the vehicle. If not, it goes a great way to prove negligence of the driver, because the driver in that case shall fail to prove that he was not at fault. But the mere absence of requisite lights is no proof of being *the proximate* cause of the accident. Such absence must be proved to be the proximate cause of the accident. Sometimes accident happens because the lights of one vehicle are so brilliant that they might dazzle the driver of the other one. This is the reason why headlights are prohibited to be burnt. In a case where an accident occurs because the driver of one vehicle is temporarily

blinded by the dazzling light at the other vehicle coming from an opposite direction the evidence of the driver is very much important. But his evidence which is the best evidence in a case like this is not admitted because he is an accused person. In this connection, it should be borne in mind whether the driver has a defective eyesight or he was temporarily blinded is a question of fact. The defective eyesight does not protect the driver if he causes an accident. Another thing is that it is the usual practice to dim bright lights as soon the vehicle meets another vehicle. In countryside it is very difficult to move in darkness without the bright head light. It is better that the bright head lights should be extinguished as soon as the vehicle meets another. It is the duty of drivers to look straight ahead where there is no street junction or level crossing of Railway lines in which case the driver must look toward the side. The driver need not look at the back unless backing his vehicle.

A driver may generally plead in a case of an accident that (1) it was done by the negligence of the driver of the other vehicle, (2) it was done by the negligence of some third person or (3) it was done by some set of circumstances over which he had no control.

In all these three cases of defence the onus lay on the driver to prove it. In case (1) it must be proved that there was some specific negligent act or omission on the part of the other vehicle. In case (2) the particular negligence of the third person should be proved. In case (3) that sudden and unforeseen emergency should be definitely established.

In case of collision with a pedestrian it is necessary to find out whether or not the driver saw the pedestrian before colliding with him. In the case which I propose to cite as an illustration this point will be found to be an important one. It is also necessary to find out how soon the pedestrian was sighted and at what distance from the vehicle. As soon as the driver sees the pedestrian he must avoid striking him. But if the pedestrian by his irregular moves prevents the driver from avoiding to strike him there could be no help for it. If, however, the pedestrian was not found to be in any way

negligent, the driver will be held liable for running him down. There are cases, where, the driver when he first finds the pedestrian in a place of safety carries on at the usual speed and runs down him because by his own act of negligence the peddestrian comes to the danger zone, the driver cannot be held liable at all. It often happens, however, that the driver does not see the pedestrian until he is close upon him and there is not the time to do anything to avoid the accident. In such a case it must be found out why is it that the pedestrian could not be seen by the driver in time. If there is some obstruction the driver is not liable. If the pedestrian was moving irregularly by playing hide and seek, he ought to be blamed. If the pedestrian is in plain view the driver must be careless and so he (driver) ought to be convicted. As I have already mentioned, the driver's defective eyesight will not protect him. Therefore, a driver will be excused if (1) the pedestrian suddenly comes in front of the vehicle, (2) he jumps from tram car in front of the bus, (3) he becomes confused or (4) he climbs on to the rear of the vehicle.

The accident may be caused by the negligence of another vehicle driver in case (1) where the vehicle was pushed against the pedestrian by another vehicle, (2) driver was avoiding another negligently driven car or negligent pedestrian or (3) driver was avoiding an animal.

If the accident was caused by circumstances beyond the control of the driver he is not liable. For example, a driver is attacked with a sudden disease as a result of which he became unconscious. But if he was intoxicated by his own act he is certainly responsible for the accident.

In cases of collisions, proof of negligence is a *sine qua non* of liability. If the driver failed to exercise that degree of care which he is in duty bound to exercise, liability cannot be avoided. This degree of care is one which an average man ought to exercise under the circumstances. In case of a vehicle going along one street colliding with a vehicle coming along an intersecting street, each should exercise equal degree of care. The question therefore would arise in such

cases as to who did not exercise proper degree of care. He who will be found to have not exercised proper degree of care will be made responsible. In the case of a vehicle going in one direction colliding with vehicle going in opposite direction, the driver who is on the wrong side should be made responsible. The accident occurs in such cases on account of (1) failure to turn into the left, (2) colliding with one vehicle after passing another or (3) sudden swerve in front of a coming vehicle. In case where both vehicles which collide are going the same direction, one behind the other the following are the reasons :—

(1) While the vehicle in front was running in a straight line.

(2) after the vehicle in front had suddenly slowed up or stopped

(3) upon the vehicle in front suddenly turning towards the right.

(4) upon the vehicle in front suddenly turning towards the left.

(5) after passing the one in front, and while drawing into near side again.

Besides the above there are cases (1) when moving vehicle strikes a stationary one, (2) when one vehicle backs into another or (3) when one vehicle collides with another, pushing it against a third.

In these cases the most clear proof of negligence is the proof of dangerous speed. When one driver sees that there is apparent danger of a collision, he should take steps to avoid the accident. If both see such things, both must try. The driver must give signals. Failure to signal when stopping or making a turn is the proof of his liability. If there be no light or if the driver of the other vehicle fails to sound his horn he is clearly negligent. The driver's evidence of shutting off the engine, applying brakes, sounding horn and otherwise regulating or directing the car is important. Every body whether of this vehicle or of that vehicle or not of any vehicle whatsoever should try his utmost to avoid an accident.

It is a humanitarian act to avoid any danger to human life or property. If the circumstances are such that one driver would stop his vehicle in order to avoid an injury to another road-user a driver who fails to stop can be held liable. The drivers are duty bound to use brakes in time of need. The use of brakes is not the only means by which a collision may be avoided and the driver may also be required to make use of the steering gear or any other means which are at hand to avoid the threatened impact. Sounding of horn is evidence of care and non-sounding is its want. It is not enough to sound the horn or give some other signal; it is also necessary that such warning is given at the proper time and place.

Then the next question is the distance within which the car stopped after the impact. The distance within which a car was stopped after an accident may be taken into consideration in determining the speed at which it was running.

In case of a collision with a pedestrian, the following question should be answered :—

1. What portion of the pedestrian's body and what part of the car came together ?

2. What happened then ? Did the man fall ? Was he at any time under the car ? Did the wheels go over him ?

In case of collision of one vehicle therefore with another the following questions are important :—

1. What was the position of each vehicle after the collision ?

2. What became of the other vehicle ?

3. What was the result of the examination of both the vehicles ?

4. After the accident could any vehicle move under its own power ?

The evidence regarding the damages to the vehicle, repairs, loss of use, hire of a substitute etc., as well as of the personal injuries and pain and suffering, medical expenses, loss of time and deceased's earning capacity etc., is also important.

It may be shown that the driver did not leave the scene of the accident until a police officer came, to whom he showed his

licence and reported the accident. It may also be seen whether or not the driver called to see the injured person after the accident.

Facts of the case.

Driver Chinta Haran Shaha drove a motor bus on the 14th June, 1931 from south to north along Cossipur Road. After halting and collecting passengers at the junction he found a scavenger car picking up refuge at the western side of the road. In passing this it had to swerve to the right which it did when a Nepali came from the north in the front of the bus. In avoiding the Nepali the driver-swerved further to his right and in so doing came upon and ran over one Chan Ali who was waiting for a bus to south, causing fracture of the left leg bones and compound fracture of both bones of the right leg. The driver stopped his bus after running several cubits ahead, after the accident. Chan Ali died of his injuries. The driver Chinta Haran was prosecuted for causing death of Chan Ali by rashly and negligently driving a motor bus

Evidence.

The depositon of P. W. 1 aged about years, taken on oath or solemn affirmation under the provisions of the Indian Oaths Act, X of 1873, before me H. N. Dutta, Police Magistrate of the 1st. class powers at Sealdah in the district of 24-Parganas this the 30th day of June, 1931.

My name is P. N. Banerjee. My father's name is Late Monomohan Banerjee I am by caste Brahmin. My home is at Mauza Banerjee Lane. Police Station Ranaghat. District Nadia. I reside at present in Mauza Chitpore. Police Station —do—District 24 Pergs. where I am S. I.

I am a S. I, Chitpore P. S. On 14. 6. 31 Constable Chandra Deo Dobey came to P. S. along with the accused (identified) and stated that about 7 a.m. on that date while he was on duty at the Baranagar crossing and regulating traffic there towards Shambazar he heard a row and found a crowd about 15 paces

from the crossing and on moving on the place found one Chanali had been injured. He heard that the bus driver of Bus No. M V257 had injured the man, and so he brought the accused. The constable sent the injured man to hospital. Ex. 1 is the F. I. I visited the spot and found blood marks on the spot, a distance of 3 paces from the eastern limit of the Cossipore Road. I drew up a rough sketch map. Ex. 2 is that map.

The injured man was transferred to Campbell Hospital where he died on 17. 6. 31. I sent the body for post mortem examination. I held an inquest.

(Sd.) H. N. Dutta,
30. 6. 31.

The meat shop of Md. Shaheb is on the east side of the road. The pucca portion at that place is about 14 cubits wide. There is practically no kutcha portion at the place.

The Nepali showed me the spot where he was knocked down. It was on the western side of the road.

(Sd.) H. N. Dutta.
30. 6. 31.

The deposition of P. W. 2 aged about 55 years, taken on oath or solemn affirmation under the provisions of the Indian Oaths Act, X of 1873, before me H. N. Dutta, Police Magistrate of the 1st. class powers at Sealdah in the district of 24-Parganas this the 30th day of June, 1931.

My name is Md. Shaheb. My father's name is Manhan Shaheb. I am by caste Musalman. My home is at Manza Police Station District I reside at present in Mauza Baranagore. Police Station—do—District 24-Pergs. where I am mill-hand.

I know the accused. He was my customer at my meat shop on the Cossipore Road. On the date of occurrence the deceased and 2 other men came to purchase meat at my shop about 7 a.m. Two of them sat in my shop and the third man went out and stood in front of my shop, about 1 cubit off from it. A bus came with a speed from Shambazar. It did not sound

its horn. It knocked down the deceased who fell quite close to my shop. The bus moved 2 to 3 cubits ahead and was stopped. The accused (identified) was the driver. The constable took the injured man in the same bus to hospital.

(Sd.) H. N. Dutta.
30. 6. 31.

The deposition of P. W. 3. aged about 28 years, taken on oath or solemn affirmation under the provisions of the Indian Oaths Act, X of 1873, before me H. N. Dutta, Police Magistrate of the 1st. class powers at Sealdah in the district of 24Parganas this the 30th day of June, 1931.

My name is Chandra Deo Choubey. My father's name is Radhapat Chowbey. I am by caste Brahmin. My home is at Mauza Police Station District
I reside at present in Mauza Cossipore Police Station—do —District 24-Pergs. where I am constable.

I am a constable of Cossipore P. S. On 14. 6. 31 I was on duty at the Baranagore crossing from 6 a m. About 7 a.m. I heard an alarm and found a man run over about 15 to 20 steps behind me. The injured man was about 3 paces from the eastern limit of the road. The bus was about 8 to 10 cubits ahead. It had its front towards the North. The accused (identifies) was the driver of the bus.

I removed the injured man to Cossipur Hospital in the same bus and admitted him there. I brought the accused to Thana.

(Sd.) H. N. Dutta.
30. 6. 31.

The deposition of P. W. 4 aged about 28 years, taken on oath or solemn affirmation under the provisions of the Indian Oaths Act, X of 1873, before me H. N. Dutta, Police Magistrate of the 1st class powers at Sealdah in the District. of 24-Parganas this the 30th day of June, 1931.

My name is Kul Bahadur Nepali. My father's name is Man Singh. I am by caste Nepali. My home is at Mauza

injuries could have been caused by the man having been knocked down by a motor. —

(Sd.) H. N. Dutta.
16-7-31.

X-exmn. :—Declined.

(Sd.) H. N. Dutt.

The deposition of P. W. 7 aged about 24 years, taken on oath or solemn affirmation under the provisions of the Indian Oaths Act, X of 1873, before me H. N. Dutta, Police Magistrate of the 1st. class powers at Sealdah in the District of 24-Parganas this the 16th day of July, 1931.

My name is Dr. B. Chatterjee. My father's name is Dr. Brojo Gopal Chatterjee. I am by caste Brahmin. My home is at Mauza..............Police Station...........District........... I reside at present in Mauza Calcutta, Police Station.............. Dist...............where I am House Surgeon, Campbell Hospital.

I was a House Surgeon at the Campbell Hospital on 14-6-31.

I examined one Chanali on 14-6-31 and found the following injuries:—

I found (1) a simple fracture of both bones of the left leg at its lower third.

(2) a lacerated wound about $\frac{1}{2}'' \times \frac{1}{4}''$ on the tip of the left second toe.

(3) a lacerated wound about $5'' \times \frac{1}{2}''$bone deep—stitched at its upper part—situated in front of the lower third of the right leg.

(4) compound fracture of both bones of the right leg lower thigh.

(5) abrasions over the right knee and left elbow joint—the abrasions were sealed.

The prognosis was grave.

The injured man said that he had been run over by a motor lorry of which he had given the No. to Cossipore P. S.

The injuries could have been caused by the run over of a bus. The man was admitted in Frasor A West Ward, Campbell Hospital.

The man died on 17-6-31 at 10-15 P. M.

No amputation was necessary when I saw the man.

(Sd.) H. N. Dutta.
15-7-31

X-exmn:—Declined.

(Sd.) B. Chatterjee
16-7-31.

The deposition of P. W. 8 aged about 45 years, taken on oath or solemn affirmation under the provisions of the Indian Oaths Act, X of 1873, before me H. N. Dutta, Police Magistrate of the 1st class powers at Sealdah in the district of 24-Parganas this the 16th day of July, 1931.

My name is Sk. Miajan My father's name is Sk. Niabat Mia. I am by caste Musalman My home is at Mauza............ ....Police Station........... ... .District............... ....I reside at present in Mauza Baranagore Police Station, Baranagore District 24-Parganas where I am servant under a doctor.

I work as a servant at the Baranagore Laboratory. I know Chan Ali. I, Ismail, Bhikari and Chan Ali went together to Baranagore Bazar for purchasing meat—on the 14th or 15th of the last month, a Sunday. We went to a meat shop about 8 A.M. We all sat in the shop. Chan ali said that he would go to Shambazar and asked us to take the meat. He stood in front of the shop, about 2 cubits away waiting for a bus. A bus came along. There was a scavenger cart which was stationering on the western side of the road. The bus came with a speed, blew no horn. It knocked a Nepali who was on the western side of the road—then passed beyond the scavenger cart and in doing so turned so much to the east that it ran over Chan ali. The bus was stopped 5 or 6 cubits ahead at the alarm roused.

Chan Ali was taken away in the bus.

It did not rain at the time of the accident but about half an hour after. Chan Ali had no umbrella with him.

I did not see any man on bike or with bike at the time of the accident or at that place. The bus did not collide any man with bike.

(Identifies the accused as the driver of the bus which ran over Chan Ali.)

(Sd.) H. N. Dutta.
16-7-31.

The deposition of P. W. 9 aged about 24 years taken on oath or solemn affirmation under the Provisions of the Indian Oaths Act, X of 1873, before me H. N. Dutta, Police Magistrate of the first class powers at Sealdah in the district of 24-Parganas this the 16th day of July, 1931.

My name is Sk. Bhikari. My father's name is Karamtali Mea. I am by caste Musalman. My home is at Mauza Baranagore Police Station, Baranagore. District 24-Parganas. I reside at present in Mauza Baranagore. Police Station Baranagore, District 24-Parganas, where I am servant under a doctor.

I work at the B. I. Co. I, Chan Ali, Mia Jan, Ismail lived in the same house. We four went to purchase meat on the date Chan Ali was run over—to a meat shop at Barnagore about 8 A.M. Meajan, Ismail and I sat down. Chan Ali stood in front of the shop, about 2 cubits away. A bus came from Shambazar side with racing speed. The accused was driving that bus. A Nepali was coming from the opposite direction, he was keeping to his left. The bus in trying to avoid him ran so much on one side as to run over Chan ali. The bus passed by a scavenger cart after passing beyond the Nepali, Chan Ali was run over on the eastern side of the road, about 2 cubits from the shop. Chan Ali was not moving when he was run over. The bus was stopped at a distance of about 15 to 20 cubits. It stopped of its own accord. (Identifies the accused as the driver of the bus which ran over Chan Ali).

(Sd.) H. N. Dutta,
16-7-31.

The deposition of P. W. 10 aged about 40 years, taken on oath or solemn affirmation under the provisions of the Indian Oaths Act, X of 1873, before me H. N. Dutta, Police Magistrate of the 1st class powers at Sealdah in the district of 24-Parganas this the 16th day of July, 1931.

My name is Ismail Momin. My father's name is Karamtali Mea. I am by caste Musalman. My home is at Mauza Bara-nagore, Police Station Baranagore, District 24-Pergs. I reside at present in Mauza Baranagore, Police Station Baranagore, District 24-Pergs where I am servant under a doctor.

About a month before I went to purchase meat along with Chanali, Meajan, and Behai to a meat shop at Baranagore. Chan Ali stood outside the shop, about 2 to 3 cubits away from the shop. A bus came with a racing speed. It slightly collided against a Nepali and passed by a scavenger cart. In avoiding the Nepali it went so much to the opposite side that it ran over Chan Ali The bus stopped about 2 to 3 cubits away. I did not see the two colliding against any man on bike or with bike at the time.

Chan Ali was not moving when he was run over. He was waiting for his bus Chan Ali wanted to go to Shyambazar. The bus that ran him over came from Shyambazar side. (Identifies the accused as the driver).

(Sd) H. N. Dutta
16-7-31.

Judgment of the Court

IN THE COURT OF THE POLICE MAGISTRATE OF SEALDAH.

Present —Mr. H. N. Dutta, Police Magistrate of the 1st Class powers at Sealdah in the district of 24-Parganas.

Case No. G/299 of 1931.

JUDGMENT.

The Emperor—Versus—Chinta Haran Shaha.
U. S. 338 I. P. C.

The facts alleged by the prosecution are simple and are as follows :—On the 14th June last Chan Ali with his 3 companions Sk. Meajan, Ismail and Bhikari went to a meat shop

the Cossipore Road, near its Junction with Paramanick Ghat Street at about 7 A. M. to purchase meat. The three others sat in the shop and Chan Ali came out and stood in front of the shop in order to go to Shyambazar and catch a bus. The Cossipore road runs north to south and the meat shop was on the eastern side of the road. A bus driven by the accused suddenly came up from the south and knocked down and ran over Chan Ali. Chan Ali was on the extreme eastern side of the road, about 3 to 4 cubits from the shop and as the accused was coming from the south, the accident took place on his right hand side. He must have swerved to the extreme right. Chan Ali was taken to the hospital almost immediately and died on the 17th June.

The defence is that there was a scavenger cart on the road in front of the accused's bus and as the accused was passing the *scavenger cart by its right, a Nepali suddenly came up on bike* across the road and that in avoiding the Nepali the accused had to swerve so much to the right that he came unawares upon Chan Ali.

P. Ws 8, 9, and 10 are the companions of Chan Ali. P. W. 2 is the shopkeeper of the meat shop where these people had gone to purchase meat and in front of which the accident took place. P. W. 5 is a tea stall keeper whose shop adjoins the meat shop. All these witnesses testify that the accused's bus ran over Chan Ali. They have identified the accused as the driver. Their evidence goes to show conclusively that Chan Ali was run over on the extreme eastern side of the road—within about 3 to 4 cubits of the shop. The S. I. who investigated the case, P. W. 1, saw blood marks at a distance of 3 paces from the shop. The evidence of the above witnesses also prove that the accused's bus was coming from the south. These are facts which have not been challenged either. Thus it has been proved that the accused ran over Chan Ali on the wrong side of the road and at the extreme eastern side of the road. The question is whether he was rash or negligent.

There was a scavenger cart. P. W. 8 says that the scavenger cart was picking up refuse and was standing. This is general

evidence in the case. The evidence of P. Ws 8, 9 and 10 is that the accused's bus first encountered with the Nepali and in avoiding him the accused's bus was deflected so much to the right that it ran over Chan Ali. They say that the accident took place after the scavenger cart had been passed. Their evidence is that the bus passed beyond the scavenger cart while avoiding the Nepali and then ran over Chan Ali. The P. Ws have denied that the Nepali was riding a bike. Their evidence is that he was going on foot. P. W. 5 who is a witness, who can not be relied upon, says no doubt that there was a man on bike but he does not say that it was the Nepali. He speaks of the Nepali in his chief and gives an impression that there was yet a third man on bike which is nobody's case. I can not believe that the Nepali was riding a bike. The evidence of the P. Ws is that the Nepali was going by his left. He was coming from north to south, so he was going by the eastern side of the road. The defence theory therefore that the Nepali came up suddenly from behind the scavenger cannot hold ground for the scavenger cart was on the western side of the road. This theory is not maintainable also on the ground that the bus encountered with the Nepali first and then pased beyond the scavenger cart. The Nepali could not have been screened from the view of the driver by the scavenger cart. The situation which necessitated the avoiding of the Nepali was therefore not due to any carelessness on the part of the Nepali but was the creation of the accused himself. The defence have not been able to prove at all that the situation was due to circumstances beyond the accused's control. Thus obviously the accused by his carelessness was on the point of running over the Nepali and if to avoid that, he ran over another man, he can not plead that he was not careless. I am of opinion that the accused was careless. There is another very significant circumstance which is that the encounter with the Nepali preceded the running over of Chan Ali. For the evidence is that the bus was stopped within a few cubits of place of run over. This suggests that the brake had been applied from before. This would go to suggest that the brake had been applied from the time that

there was the risk of running over the Nepali. P. Ws. 8 and 10 have said that they did see the Nepali actually on the point of being run over. They would certainly have done so, if this followed the run over, for their attention had been focussed on the scene from the moment of the run over. Apart from that as these witnesses saw the run over they are competent to depose to the chronological order of the happenings. P. W. 5 is a witness who attempted to support the defence case in toto. But his evidence can not be relied upon, as it is contradictory to the evidence of the majority of the witnesses and as, for his failure to appreciate the real defence point, he has given a version which is nobody's case, *viz.*, that there was third man on bike. For the considerations stated above I hold that the accused was negligent and the run over was due to his own negligence.

The evidence of the doctor (P.W.6) who held the post mortem is that death was due to sepsis and exhaustion as a result of the injuries. The principal injury was the amputation of the right leg, at the thigh. The doctor who treated the deceased and amputated the leg has not unfortunately been examined and it cannot be ascertained what the sepsis was due to, particularly as it appears that the deceased had received outside treatment from some other doctor before having been brought over to the hospital. The accused is entitled to the benefit of doubt for this gap in the evidence and cannot be held responsible for the death. But the evidence of P.W. 7 (doctor) shows that as a result of the run over there was a compound fracture of both the bones of the right leg and the simple fracture of both the bones of left leg. The accused is therefore liable under section 338 I. P. C. I find him guilty under section 338 I. P. C. and sentence him to pay a fine of Rs. 250 and in default to undergo R.I. for three months. I do not send the man to jail as he ran over the man in his attempt to avert another accident. His license is also suspended for three months U/S. 18 of the M. V. Act.

Sealdah, Sd. H. N. Dutta,
30-11-31. Police Magistrate, Sealdah.
Exercising 1st Class Powers.

There was an appeal to the Sessions Judge of 24 Pergannahs which was dismissed and there was an application for revision of conviction and sentence before the High Court and a Rule was obtained which was also discharged.

Comment.

It transpired in evidence recorded in the case that the Cossipore Road is only 14 cubits wide, and that nearly half of the road to the west was blocked by a scavenger's cart, and Chinta Haran who was proceeding from south to north found his left side obstructed. It was admitted that a Nepali came up in front of the bus, and in his attempt to save him he swerved the bus to the right and thereby the deceased who was standing about 3 cubits from the eastern limit of the road was knocked down. The investigating police officer stated that the Nepali showed him the spot where he fell down and that it was the western side of the road, and the Nepali himself corroborated this piece of evidence. It also transpired in evidence that the accused blew the horn, stopped the bus of his own accord, within one or two cubits from the spot where the deceased was knocked down. The learned Magistrate held that there was in fact a scavenger's cart on the western side of the road, that the driver applied brakes when he encountered the Nepali previous to knocking down the deceased and that the deceased was run over in the driver's attempt to avert another accident. In my opinion this is quite sufficient to acquit the man. I have made this very clear in my preliminary observation. The only thing which the Magistrate did not accept was that the Nepali came suddenly from behind the scavenger's cart. I think this is not material at all. Hence I thought this was a clear case of failure of justice.

TRAFFIC POLICE V. THANAH POLICE.

Facts will appear from the following report and the petition filed by Lachman Singh on the 8th April 1932.

Police Thana Case No. 1500 d. 4-4-32.

Calcutta Police Force. Section G. Town.

Report of petty case on 5th April, 1932.

(A separate form to be used for each case, and columns 3, 7 and 8 to be left blank by the police).

1. Whether accused forwarded in custody or on bail or recognizance.

2. Name of articles or weapons transmitted..........

Particulars to be recorded under section 370 Cr.P.C.

3. Serial number of Magistrate's case register—4459.

4. Name of complainant and his parentage and residence:—Nordnann, R. F. 231.

5. Name of the accused person and (except in the case of an European British subject) his parentage and residence—Lachman Singh C/o Chand Singh of 48, Chakrabere Road South, driver of M.B. 28 L. No. 12935.

6. The offence complained of or proved with date of commission—(1) Parking at the bus stop near Chowringhee in front of Bristol Hotel for about 10 minutes at about 4-25 p. m. on 4-4-32. Section M.V. Act. (2) Refusing to show his license when demanded by the complainant at the time and place aforesaid. Section M. V. Act. (3). Further charged with disorderly conduct for assaulting the complainant with slaps and using abusive languages when asked by the complainant not to do so and refusing to come to thana. Section 68 IV. 66.

7. The plea of the accused and his examination (if any) pleads guilty.

8. The final order and date of such order—Rs. 18.

Sd. J. K. Biswas.

Addl. Presy. Magte., Calcutta. 2-5-32.

To the Court Inspector, A. P. Magistrate's Court.

Sd. Illegible.

Inspector of Police,

Section G. O. P.

CALCUTTA POLICE. PETTY CASE REGISTER.

Emperor vs. Lachman Singh.

Exhibit A.

Date—4-4-32. Time—4-40 p.m.

Informant—Sergt. Nordnann. R. F./231, with Mr. Leech of T. P./217. Ram Kumar Dubey.

Sd. Sergt.—Nordnann, No. 231.
Sd. (In Nagri).

Accused—Lachman Singh S/o. Chando Singh of 48 Chakraberia Road South, Driver of M. B. 28—L. No. 12935.

Charge.—(i) Parking at the Bus Stop near Chowringhee Road for about 10 minutes in front of Bristol Hotel at about 4-25 p. m. on 4-4-32.

(ii) Refusing to show his license when demanded by the complt. at the time and place aforesaid.

(iii) Further charged with disorderly conduct and by assaulting the complainant with slaps and abusing filthily when asked by the complainant no to do so and refusing to come to P. S.

Section M. V. Act/68. IV. 66.
Sd. Illegible.

ACCUSED.

Time of Arrest.—4-25 p.m.

How dealt with.—Custody in default of bail. Since bail.

Personal property.—The M. B. was not brought by the sergeant, the accused was put up before sub-inspector Akram Shah who ordered me to take down his complaint in the Petty Case Register.

The accused says he was assaulted by the complt. with fists and blows—no external marks of injury.

Complainant complains of pain of the right hand and sent to hospital for treatment.

Orders.—..............

Remarks.—Surety Bakhtwar Singh, 26/1, Mudiali Road. Dr. L. No. 32060.

Case No. G. R. 460 of 1932.
Emperor vs. Lachman Singh.

Exhibit 1.

While on duty on Chowringhee, at about 4-24 p. m., I noticed Bus No. 28 parked under a Bus stop for a period of over 5 minutes, and later coming up to the bus I noticed that the driver had arrived and taken up his position in his seat, so I got on the foot-board and asked for his license, he deliberately turned round and pushed me off the foot-board and while I was endeavouring to enter the driver's entrance I was assaulted by him by a few blows and kicks, and shoved out of the bus. On two occasions, the man seemed very determined to show fight, and totally refused to drive his bus or go to the thana with me when ordered to do so. Being unable to reason with the man, I was forced to summon the help of T. P. 217, and together we were able to bring him to the thana, after a great struggle, in which he may have received some minor injuries. As I have not received any serious injuries, or flesh wounds, I do not wish to attend the hospital. A passer-by who happened to witness the scene can corroborate my statement. He is one Mr. Brown C/o. The Italian Stores, 9/3, Chowringhee.

Sd. .Sergt. Nordnann.

D. C.—A charge under section 353 I. P. C. may be entered against the bus driver.

Sd. Illegible.
6-4-32.

IN THE COURT OF THE CHIEF PRESIDENCY MAGISTRATE, CALCUTTA.

APPLICATION NO. 716 OF 1932.

Lachman Singh, Driver of Bus No. M. B. 28 vs. *Sergeant No. 231.*

Charge · Section 323 I. P. C.

Facts : The complainant is the owner and driver of Bus No. M. B. 28. On 4-4-32 at about 4 p. m. the complainant was driving his own Bus No. M. B. 28 and was proceeding towards Esplanade junction. The bus was then under reserved service and as several passengers wanted to get down near the Bristol Hotel, the complainant stopped the bus in front of a bus stop. Immediately after this the accused came from Corporation St. and wanted to know why the bus was standing there. On the complainant's explaining to him the reason for this the accused wanted a rupee from him for driving the bus. On the complainant's refusing to pay him the bribe the accused demanded his license. The complainant wanted to know what was his offence and on this the accused grew furious and abused the complainant and pulled him by the hair, mercilessly assaulted him with fists and also struck him with the handle causing injuries on his person. The accused then forcibly threw the complainant into a taxi and took him to Hare St. thana and to the hospital and on coming back to the thana he reported the matter but his complaint was not received. Prays for process against the accused, under section 323 I. P. C.

Witnesses : 1. R. N. Coondoo, 2. Md. Yasin. 3. Md. Hati-Mali Khan 4. Mr. M. N. Bose and others.

Sd. Illegible. 8-4-32.

Complainant examined. The D. C. Head Quarter for favour of enquiry and report 19. 4. Sd. S. K. Sinha, C. P. M. 19th April, 1932.

To 29. 4. Sd. S. K. Sinha, C. P. M. 27th April, 1932.

To 6. 5. with C. C. Sd. S. K. Sinha, C. P. M. 29th April, 1932.

BENGAL BUS SYNDICATE.

Phone No. Cal. 1620 (Incorporated in India).
Reference No. 758-31-32

Head office—1-C, Chowringhee Road,
Calcutta 11th & 12th April, 1932.

The Deputy Commissioner of Police,
Traffic Head Quarters, Lalbazar, Calcutta.

Dear Sir,

Re : Lachman Singh, vs. Sergeant No. 231.

The above matter has been sent to you by the learned Chief Presidency Magistrate for inquiry and report by the 19th April. The complainant is a driver of M. B. 28 which belongs to the Express Services System of the Bengal Bus Syndicate. We will be glad if you will kindly inform us as to when and *before whom the prosecution witnesses shall be produced in* connection with the inquiry.

Yours Faithfully,
Sd. Illegible.
Traffic Superintendent.

Recd. by Sd. Illegible. 12-4-32.
Sd. in Nagree (Ram Kison).

Memo.

This refers to Sec. G c/No. 253/5-4-32 Sgt R. F. 231 vs. Lachman Singh M. B. 28. Sec. 353 I. P. C. Case fixed for 20-4-32 before C. P. M.

C. P. M. This is X case. The original case against the driver under section 353 is before you.

Sd. Illegible D. C.
14-4.32.

The A. C. through, the Inspector H. Q. F.

Sir, I beg to report that while on duty on Chowringhee Rd. between the hours of 3 p.m. and 6-30 p.m. at 4-25 p.m. I observed a (reserved bus) No. 28 parked directly under a bus stop outside Bristol Hotel, on E. Side of Rd. facing S, for a period of 10 minutes, and on demanding the licence of the bus driver I was shoved off the foot board and while attempting to

get inside was again shoved out on two occasions. Finding it impossible to reason with the man or get him to consent to go to the thana, I summoned the help of T. P. 217 on point duty at Bristol crossing and between us we eventually managed to arrest him and take him to the thana, where I laid my complaint.

I remain,
Sir,
Yours obediently,
Sgt. Illegible.

To the A. C.,
through the Insp ector, H. Q. F.

Sir, I beg to report that while on duty on Chowringhee Road between the hours of 3 p. m. and 6-30 p. m. at 4-25 p. m. I observed a (reserved bus) No. 28 parked directly under a bus stop and left unattended for a period of 10 minutes, outside Bristol Hotel on E. side of Rd. facing S. After 10 minutes from the opposite side of the road, I observed that the driver had returned to the bus, on going up to the driver and asking for his license, was shoved off the foot board by him, so I attempted to get into the bus, but was again assaulted by him on two occasions.

Finding it impossible to reason with the man, or get him to go to the thana, I summoned the help of T. P. 217 on point duty at Bristol crossing and together we eventually managed to arrest him, and take him to the thana where I laid my complaint. In the event of us having to use force, he may have received some minor injuries which we are unware of and considering our injuries were very minor we did not attend the hospital for treatment. A passer-by named Mr. A. Brown who witnessed the whole scene, can corroborate my statement and he gave me his address as

C/o Italian Stores No. 9-3 Chowringhee.

I remain,
Sir,
Yours obediently,
Sgt. Illegible. No. 231.

CASE No. 460 of 1932.

Emperor versus *Lachman Singh*

P. W. 1. SERGEANT T. NORDNAN ON S. A :—On 4-4-32 I was on duty in Chowringhee. A motor bus No. 28, a reserved bus driven by the accused, stopped under a bus stop sign outside the Bristol Hotel at 4-25 P. M. The driver was not in the bus. I went away and returned in 10 minutes' time and found accused in the bus. I asked him for his license. I was standing on the offside footboard. He pushed me off the footboard. I tried to enter by the driver's entrance on the near side, two or three times. Each time he pushed me off. I tried to arrest him. He hung on to the steering wheel and refused to go to thana. I called a T. P. constable No. 217 on duty at the Bristol crossings. Meanwhile the accused went into the body of the bus. Then I arrested him. I entered a petty case against him for leaving his bus unattended at the bus stop. At thana I entered charge of assault against him. I did not notice any passengers in the bus. A Mr. Brown was standing near by.

CASE No. G. R. 460 of 1932.

Emperor versus *Lachman Singh.*

CROSS EXAMINATION AFTER CHARGE

P. W. 1. NORDNAN :—The bus was facing south. It carried a reserve board. Accused was not in the bus when I first went up to it. There were many persons standing there. The office of the Bengal Bus Syndicate is beside the Bristol Hotel. It is an offence to park under a bus stop sign. I did not notice if any bus was parked there. It is false to say I asked accused for drink or money. When accused refused to show me his license I had to arrest him. I did not assault him. I only wanted to arrest him. Accused was sent to hospital. He may have received some injuries when I tried to get him out of the bus as he hung on to the steering wall. The assault of which I complain took place before I arrested accused. At the thana I mentioned the pushing by the accused. The accused was tried in the Traffic Court for this occurrence, for parking under a bus stop. In this case I did not state that the accused

shoved me off the bus when I demanded his license as I was not asked that point. Accused was not present that day in the Traffic Court. I handed in a written report of the occurrence (Ex...at the thana that day at 4-25 p. m.). Accused did complain against me at thana. I put in my report before that. It is not a fact that the thana officer refused to record my complaint and it was only at 7. p.m. that I put in my report.

P. W. 2. RAM KUMAR DUBEY on S. A:—I am a T. P. constable (No. 217). I was on duty. The Sergeant P. W. 1 called me. I went and saw bus No. 28 at the bus stop. The Sergeant asked accused to take the bus away. Accused refused to do so and refused to show his license. The Sergeant told him he would have to go to thana. The bus was empty. Accused refused to go and said his arm was broken. The Sergt. put him in a taxi and took him away. When accused refused to show his license, the sergeant caught his hand. Accused knocked the Sergeant's helmet off.

P. W. 2. RAM KUMAR :—I saw the sergt. standing on left side of bus. Accused refused to show his license or to go to thana. The sergt. gently brought the accused out of the bus and put him into a taxi. It was at the time that accused hit him. I went with them to thana. I did not see any injury on accused's person. I did not hear accused make any complaint at thana of assault.

P. W. 3. AKRAM SHAH on S.A:—I was S. I. attached to Hare Street. On 4-4-31 accused was brought to thana by sergeant Nordnan. A petty case was entered. The accused was told to appear before the Dy. Commissioner next day. On 5-4 a charge was entered under section 252 I.P.C. against accused. Under orders of the Dy. Commissioner I investigated the case.

Sd. S. K. Sinha,
Chief Presidency Magistrate.
Calcutta, 29th April 1932.

P. W. 3. AKRAM SHAH :—I saw sergeant Nordnan and the accused at Thana in the Petty Case room between 5-6 p.

I found that a petty case had been entered against the accused. The sergeant told me he had been assaulted by accused. I took up enquiry and recorded accused's statement and took the sergeant's statement in writing also (Ex. 1). Both complained against each other. I did not see any injury on the accused. I sent him to hospital that evening. It is not true that the sergeant put in his report of assault only after accused had complained of assault. This is the entry in the Petty Case Register (Ex. A).

Sd. S. K. Sinha,
Chief Presidency Magistrate, Calcutta.
10th May, 1932.

SUMMARY FORM FOR THE USE OF PRESIDENCY MAGISTRATE UNDER SECTION 370 Cr. P. C.

Case No. $\frac{\text{G. R.}}{460}$ of 1932.

Name of complainant (if any):—Sergt. Nordnan.

Name of the accused person, and (except in the case of an European British subject) his parentage and residence:—Lachman Singh.

The offence complained of, or proved with date of commission: Assaulting complainant in the execution of his duty on 4/4/32 on Chowringhee. Section 353 I. P. C.

The plea of the accused and his examination (if any):—Accused pleads not guilty. "I kept my bus near the bus stop. I remained in the bus. The sergeant came and asked why I had put up a Reserve Board. He asked for the Reserve Pass, I showed it; he read it; the sergt. said it was 4 p.m. and he was very thirsty and asked for a bottle of beer; I said I had no money. The Sergeant told me to get it from the conductor. I refused to do so. He insisted on my giving the money and said: You have to give it when I ask for it: you do so when a case is entered against you. The sergeant then came up to my seat and demanded the license. I said I would show it but would like to know what wrong I had done. Then he said:

'Don't talk too much : I am thirsty : I'll give you' I had stopped my engine. I started up and said I would go to thana ; the sergeant caught hold of my hair and pulled me, I did not push him."

Sd/- S. K. Sinha.
Chief Presidency Magistrate,
29th April, 1932.

Section 342 Cr. P. C. :—Nothing to add.

Judgment :—Sergeant Nordnan (P. W. 1) who was on duty in Chowringhee on April, 1932 saw motor bus No. 28, bearing a reserved notice board, stop under bus stop sign, outside the Bristol Hotel, at 4-25 p. m. Ten minutes later he saw the accused sitting in the driver's seat. He went up to the bus, stood on the off-side foot-board below the driver's and asked the accused to show him his license. The accused pushed him. The sergeant then tried to enter by the near side and was again pushed off by the accused; this happened two or three times. The sergeant then entered the bus and arrested the accused and ordered him to accompany him to the thana. The accused refused to budge and hung on to the steering wheel. The sergeant then carried him bodily into taxi and conveyed him to the thana. The accused denies having pushed the sergeant and alleges that the latter demanded a bribe from him. At the thana (Hare Street) a charge was entered against the accused for the offence of leaving his bus unattended under a bus stop sign and also for assaulting the sergeant. Next morning under orders of a Deputy Commissioner of Police, the thana police took the case under section 353 I. P. C. The Traffic Police took the case under the Motor Vehicles Act, for refusal to show his license and for parking the bus in an unauthorised place. The Traffic Police sent their chalan direct to the Traffic Court and on 2. 5. 32 the accused was convicted on his pleading guilty and fined Rs. 18/-. On 5. 4. 32 the Hare Street Police submitted a chalan under section 353 I. P. C. to the Chief Court, where the case was taken up. As I have pointed out in a similar case. *Emperor—Vs.—Puran Singh*

under section 353 I. P. C. (General Register Case No. 144 of 1932,—Thana Case No. 230 of 5. 4. 32) the procedure adopted is defective and illegal. There is in such cases overlapping between the Thana Police and the Traffic Police. Under the provisions of sec. 253 (2) Cr. P. C. read with section 403 (1) Cr. P. C. there can only be one trial, in one Court. The present trial under sec. 353 I. P. C. is barred by S. 403 (1) Cr. P. C. A further defect is noticeable. The Traffic Police submitted a chalan on three counts (Ex. B) failure to show license, parking in the wrong place, obstruction under the M. V. Act, and thirdly disorderly conduct in assaulting the sergeant by slapping and abusing him under section 68 of the Calcutta Police Act. The record of the case shows a compendious plea of guilty. Whether the accused pleaded guilty to the charge of assault as well as the two other minor charges cannot be ascertained now. Be that as it may, the procedure adopted is altogether defective. By reason of departmental overlapping, there has been a double charge of assault. The accused cannot be tried twice over for the same offence, in different Courts, first under section 68 of Act V of 1866 and later under section 353 I. P. C. On this ground alone the accused is entitled to an acquittal. On the evidence also the charge is not maintainable. There are two eye witnesses, *viz.*, a constable P. W. 2 and a Mr. Brown (P. W. 4). Both state that the accused refused to show his license. The constable says that when the sergeant caught hold of accused's hand to arrest him, the accused knocked his helmet off. Mr. Brown, however, says that the accused hung on to his wheel and refused to go to the thana and had to be removed bodily. Neither the constable nor Mr. Brown speak of any pushing by the accused. The sergeant's case originally was that he was slapped by the accused, not pushed. In the present case he only complains of being pushed off the foot-board. The evidence clearly shows that the accused refused to show his license and was then rightly arrested by the sergeant. As he refused to leave the bus, the sergeant was obliged to pick him up and deposit him in a taxi. There is no offence. Hence the counter-complaint of the

accused of assault against the sergeant must be dismissed. Equally, the fact that the accused put out his left arm to ward off the sergeant who was trying to arrest him, which is all that happened according to the evidence of Mr. Brown, does not constitute any offence under section 353 I. P. C. The accused Lachman Singh is accordingly acquitted under section 258 Cr. P. C.

Sd/- S. K. Sinha,
Chief Presidency Magistrate, Calcutta,
16th. May, 1932.

THANA POLICE REFUSING TO RECORD A COMPLAINT AGAINST A POLICE OFFICER.

Case No. 2115 of 1930.

In the Court of the Addl. Chief Presidency Magistrate, N. D. Calcutta, Sec. A. 1 Sher Singh conductor of Bus No M. B. 331 (Patiala). 2 Amar Sing driver of the bus. Vs. Chandrika Sing T. P. Jamadar. 6 Constables names unknown. *Charge*—Sections 379, 323 and 426 I. P. C. *Facts* :—Complainant No. 1 is the conductor and No. 2. is the driver of Bus No. M. B. 331 Patiala, which runs from Shyambazar to Alambazar (route No. 32). The accused is a Traffic Police Head Constable doing duty at the Bus Stand at Shyambazar. On the 4th instant at about 12-30 noon while the bus was about to start from Shyambazar stand the accused came and asked for Re. 1/- as Puja bukshish from complainant No. 2. Complainant No. 2 refused to pay Re. 1/- to the accused and started the bus but the accused got up on the foot board and started abusing the complainant and criminally intimidated him. Complainant No. 2 then stopped the bus in front of a petrol shop for petrol and the accused continued asking for money and abusing him even there. When the bus came near the Chitpore Road the ac-

cused blew his whistle upon which 6 constables came up. The accused then asked the driver to stop the car and on his refusing to do so the accused caught hold of the driver by his beard and slapped him on the face. On this the bus got out of control and dashed against a buffaloe cart and the head light glass was broken. The accused then forcibly took out the license from the driver's pocket and threw it on the street. Then the accused came and caught hold of complaintant No. 1 and severely assaulted him with slaps and fists and with lathi causing injuries on his person. The accused then forcibly snatched away the conductor's bag and took out the money amounting to Rs. 27/13/- and threw away the bag. After this the accused and other constables left the place. The complainant then reported the matter at the Chitpore thana which sent the case to Sec. "A" Town and sent complainant to the Hospital for treatment. Prays for process against the 'accused. Signature in Urdu. Signature in Garumukhi.

Sd./ S. C. Gupta, Advocate. 9-10-30.

Complainant examined.

Order :—To D. C. Head Quarters for favour of enquiry and report.

CASE No. 2115 of 1930.

Application No. P. R. 3790 of 1930.

In the Court of the Additional Chief Presidency Magistrate, Calcutta. In re: *Sher Sing and Amar Sing* vs. *Chandrika Sing*. *Charge* :—Secs. 379, 323 and 126 I. P. C. Case fixed for 29-10-30. The humble petition of the complainants abovenamed Most Respectfully Sheweth :—1. That the above case is fixed for hearing before your honour on the 29th October along with the case against your petitioner Amar Sing. 2. That the above occurrence took place on the 4th October and your petitioner complained about it to the police who made certain enquiries but your petitioners' witnesses were not examined during the enquiry. 3. That your petitioner then filed the above application on the 9th October last with a prayer for

process against the above accused ,and the application was sent to the Deputy Commissioner of Police Head Quarters for favour of enquiry and report. 4. That your petitioner went to the Deputy Commissioner of Police Head Quarter with his lawyer and witnesses but the learned Deputy Commissioner said that he would not examine any witnesses but would only send the previous papers to Court. 5. That on the last date of hearing your petitioner prayed for a judicial enquiry but the case was adjourned till 29-10-30 without any order for a judicial enquiry. 6. That the above occurrence took place in broad day light in the presence of many people and your petitioner has got 12 witnesses to prove his case and some of whom were produced before the Deputy Commissioner of Police. 7. That your petitioners are ready to prove their case by producing witnesses before your Honour. 8. In these circumstances your petitioners humbly pray that your Honour may be pleased to order a judicial enquiry in the matter. And your petitioners as in duty bound shall ever pray.

Signature in Urdu.

Sd. S. C. Gupta, Advocate,
28-10-30.

Order—With papers to-morrow

Sd. N. Ahmed.
28-10-30.

Order—File

Sd. N. Ahmed.
Additional Chief Presidency Magistrate.
Northern Division, Calcutta.
29-10-30.

By 25-10-30.
Sd. S. Wajid Ali—9-10-30.

Order—To 29-10-30 for perusal of papers.

Sd. N. Ahmed.
25-10-30.

Order—Read D. C. N. D's report and the police papers. The complainant's story of the Head Constable demanding bukshis and (on his refusal to comply) assaulting and snatching away his money etc. appears to be an invention as afterthought to create a defence. Almost immediately after the occurrence complainant Amar Singh made a report at the thana. There is no mention in the report of the demand of *bukshis*. Then the story was that the T. P. Jamadar boarded the foot board and demanded license which he refused to show and that the T. P. Jamadar snatched away the license and there was some hauling and pulling etc. This was on 1-10-30. The entry was read over to Amar Sing by D. C. on 6-10-30. Amar Sing admitted the facts and stated that H. C. caught him by the beard. He also admitted his refusal to show his license. A perusal of the police report also shows that the complainant's story is an after-thought. Most of the witnesses examined by the Police do not appear to support the complainant's story. Dismissed section 203 Cr P.C.

Sd. N. Ahmed.
Additional Chief Presidency Magistrate,
Northern Division, Calcutta.
29-10-30.

IN THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

Criminal Revisional Jurisdiction.

IN THE MATTER OF AN APPLICATION UNDER SECTION 439 OF THE CODE OF CRIMINAL PROCEDURE AND IN THE MATTER OF

(1) Sher Sing, conductor of Bus no. M. B. 331 (Patiala).
(2) Amar Sing, driver of the bus no. M.B. 331 (Patiala).

Complainant Petitioners vs. Chandrika Sing, T. P. Jamadar of the Calcutta Police Force Accused, Opposite party.

To

THE HON'BLE SIR GEORGE CLAUS RANKIN Kt.
CHIEF JUSTICE AND HIS COMPANION
JUSTICES OF THE HON'BLE COURT.

The humble petition of the above-named petitioners most respectfully,

SHEWETH.—

(1) That your petitioner Sher Sing is the conductor and your petitioner Amar Sing is the driver of bus no. M. B. 331 (Patiala) which runs from Shambazar to Alambazar (Route No. 32) and that the opposite party is a Traffic Police Head Constable doing duty at the bus stand at Shambazar in the city of Calcutta.

(2) That on 4th of October last at about 12-30 p. m. while the said bus was about to start from Shambazar stand the opposite party came to your petitioner Amar Sing and asked for rupee one as his Puja baksis, but your petitioner Amar Sing refused to pay any baksis to the opposite party and started the bus whereupon the opposite party got upon the foot board and began to abuse the petitioner Amar Sing and criminally intimidate him.

(3) That after taking the bus to certain distance your petitioner Amar Sing stopped the bus in front of a petrol shop for petrol and the opposite party continued to abuse him even then.

(4) That thereafter the bus came near the Chitpur Road when the opposite party blew a whistle whereupon six constables came up and the opposite party asked your petitioner Amar Sing to stop the bus and on his refusing to do so the opposite party caught hold of the petitioner Amar Sing by his beard and slapped him on the face whereupon the bus got out of control and dashed against a buffalo cart and the head light glass was broken.

(5) That the opposite party thereafter forcibly took out the license from your petitioner Amar Sing's pocket and threw it down on the street.

(6) That then the opposite party came and caught hold of your petitioner Sher Sing and forcibly assaulted him with slaps and fists and with a lathi causing injuries on his person and also forcibly snatched away the conductor's bag and took out the money amounting to Rs. 27-13-0 and threw away the bag in the street.

(7) That thereafter the opposite party and the said six constables left the place and that your petitioners reported the matter to the officer in charge of the Chitpur Police Station who sent the case to Sec. " A " town for investigation and sent your petitioner to the hospital for treatment.

(8) That the Officer-in-Charge did not make any investigation in your petitioner's case but sent up your petitioner Amar Sing under the Calcutta Motor Vehicles Rules Nos. 22, 22A for trial before the Traffic Court, Calcutta.

(9) That the above occurrence took place in broad day light in the presence of many respectable passengers and shop-keepers of the locality and accordingly your petitioners moved the Additional Chief Presidency Magistrate praying for process against the opposite party and requested him to make a judicial inquiry by summoning those witnesses.

(10) That on the 29th October 1930, the Additional Chief Presidency Magistrate without making a judicial inquiry passed the following orders :—

" To D. C. Headquarters for favour of inquiry and report by 25th October 1930 " whereupon your petitioners' Advocate Mr. S. C. Gupta requested the Magistrate to summon witnesses for their examination before the Court but the learned Magistrate observed that the witnesses might be examined by the Deputy Commissioner, Head quarters, Calcutta Police.

(11) That your petitioners appeared before the Deputy Commissioner of Police Headquarters with their Advocate Mr. Gupta and some of these witnesses, but the learned Deputy

Commissioner of Police said that he would not examine any witness but would only send the papers to the Court.

(12) That the Chief Presidency Magistrate of Calcutta by his order dated the 23rd October 1930, directed that the aforesaid case of your petitioners against Chandrika Sing might be heard by the Additional Chief Presidency Magistrate along with the above mentioned traffic case.

(13) That your petitioners applied to the Additional Chief Presidency Magistrate on the 28th of October, 1930 for making a judicial inquiry in the matter. The learned Magistrate recorded the word " File " upon the petition and did not dispose of the same.

A certified copy of the said petition is attached herewith and marked with letter " A ".

(14) That both the cases were fixed for hearing on the 29th of October, 1930 when the Additional Chief Presidency Magistrate, without giving your petitioners an opportunity to examine any of the said witnesses, dismissed the case under Section 203 of the Cr. P. C., and adjourned the said traffic case to the 11th November, 1930 for hearing.

(15) That your *petitioners being aggrieved by the said* order of dismissal, dated the 29th October, 1930, beg to move your Lordships on the following amongst other.

Grounds.

(1) For that the learned Magistrate ought to have given your petitioners an opportunity to examine witnesses in support of his case.

(2) For that the learned Magistrate has erred in refusing to make a judicial inquiry in the matter.

(3) For that the learned Magistrate ought to have judicially disposed of your petitioners' petition for further enquiry.

Your petitioners therefore pray that your Lordships may be pleased to call for the records of the case and to issue a rule upon the Chief Presidency Magistrate of Calcutta as well

as upon the opposite party to shew cause why further inquiry should not be ordered in the matter and to pass such other and further orders as to your Lordships may seem fit and proper and further proceedings in the connected traffic case might be stayed pending the hearing of this application.

And your petitioners as in duty bound shall ever pray.

The Hon'ble High Court was moved and the High Court ordered retrial of the case against the Police Officer.

BENGAL ACTS I & XIII OF 1932.

THE BENGAL MOTOR VEHICLES TAX ACT, 1932.

As amended by

Bengal Motor Vehicles Tax (Amendment) Act, XIII of 1932.

An Act to provide for the imposition and levy of a tax on motor vehicles in Bengal.

Preamble.

WHEREAS it is expedient to raise funds for additional expenditure on roads in Bengal and for that purpose to impose a tax on motor vehicles in Bengal;

5 & 6 Geo. V, c. 61; 6 & 7 Geo. V, c. 37; 9 & 10 Geo. V, c. 101.

AND WHEREAS the previous sanction of the Governor General under sub-section (3) of section 80A of the Government of India Act has been obtained to the passing of this Act.

It is hereby enacted as follows:—

Short title, commencement and extent.

1. (*1*) This Act may be called the Bengal Motor Vehicles Tax Act, 1932.

(2) It shall come into force on such date as the Local Government may, by notification in the *Calcutta Gazette*, appoint.

(3) It extends to the whole of Bengal.

Definitions. 2. In this Act, unless there is anything repugnant in the subject or context,—

VIII of 1914. (1) "certificate of registration" means a certificate of registration of a motor vehicle issued under the Indian Motor Vehicles Act, 1914 ;

(2) "registering authority" means the authority empowered under the Indian Motor Vehicles Act, 1914, to register motor vehicles ;

(3) "motor vehicle" includes a vehicle, carriage or other means of conveyance propelled or which may be propelled, on a road by electrical or mechanical power either entirely or partially ;

(4) "prescribed" means prescribed by rules made under this Act ;

(5) "the tax" means the tax imposed under this Act ; and

(6) "Taxing Officer" means an officer appointed under section 3.

Appointment of Taxing Officers. 3. The Local Government may, by notification in the *Calcutta Gazette*, appoint such persons or agency as it thinks fit to be Taxing Officers and may in such notification specify the areas within which such officers shall exercise the powers conferred and perform the duties imposed on them by or under this Act.

Imposition of Tax. 4. (1) As from the first day of April, 1932, a tax at the rate specified in the First Schedule shall be imposed on all motor vehicles kept for use in Bengal.

(1a) a person who keeps a motor vehicle of which the certificate of registration is current shall for the purposes of this Act be deemed to keep such vehicle for use.

(2) The tax imposed under sub-section (1) shall be payable for the year and in advance by the person who keeps a motor vehicle for use :

Provided that a Taxing Officer may allow quarterly period payment of tax for one or more quarter periods at the rate, for each such of one quarter of the tax payable for the year.

(3) If a Taxing Officer is satisfied that a motor vehicle has not been used for any complete calendar month in the year he shall refund or remit in respect of the said vehicle one-twelfth of the tax payable for the year for every complete calendar month for which the said vehicle has not been used ; and

(4) If any person fails to deliver a declaration or additional declaration in accordance with the provisions of section 6 the Taxing Officer may, after making such inquiry as he thinks fit, and after giving an opportunity to such person to be heard, if he so desires, require him to pay any tax or additional tax which the Taxing Officer may find such person liable to pay under the provisions of this Act and may also impose on him a penalty which may extend to half the amount of the tax to which he is found liable.

Refund on surrender of registration certificate.

5 When any person has paid the tax in respect of a motor vehicle he shall be entitled, on production of a certificate signed by the registering authority stating that—

(a) the certificate of registration and the registration card granted in respect of such vehicle has been surrendered, to a refund for each complete calendar month of the period for which such tax has been paid and which is unexpired on the date on which the certificate of registration was surrendered, of an amount equal to one-twelfth of the tax payable for the year in respect of such vehicle, or

(b) an application for the registration or for the renewal

of the registration of such vehicle has been refused, to a refund of the tax paid.

Declaration by person keeping or using a motor vehicle.

6. (1) Every person who keeps a motor vehicle for use shall fill up and sign a declaration in the prescribed form stating truly the prescribed particulars and shall deliver the declaration as so filled up and signed to the Taxing Officer and shall pay to the Taxing Officer the tax which he appears by such declaration to be liable to pay in respect of such vehicle.

(2) Where a motor vehicle is altered so as to render the person who keeps such vehicle for use liable to the payment of an additional tax under section 7, such person shall fill up and sign an additional declaration, in the prescribed form showing the nature of the alterations made and containing the prescribed particulars and shall deliver such additional declaration as so filled up and signed to the Taxing Officer and shall pay to the Taxing Officer the additional tax payable under section 7 which he appears by such additional declaration to be liable to pay in respect of such vehicle.

(3) Every person who owns any motor vehicle which is let for hire otherwise than on a hire-purchase agreement shall, for the purpose of this Act, be deemed to be the person who keeps for uses such vehicle.

Payment of additional tax.

7. Where any motor vehicle in respect of which the tax has been paid is altered in such a manner as to cause the vechicle to become a vehicle in respect of which a higher rate of tax is payable, the person who keeps for uses such vehicle shall be liable to pay an additional tax of a sum which is equal to the difference between the tax already paid in respect of such vehicle and the tax which is payable in respect of such vehicle after its being so altered, and the

registering authority shall not grant a fresh certificate of registration or renew any certificate of registration in respect of such vehicle as so altered until such amount of tax has been paid.

Receipt for tax.

8. The Taxing Officer shall grant and deliver to every person, who pays to him the tax or additional tax in respect of any motor vehicle, a receipt in which shall be specified the particulars of the tax paid and such other particulars as may be prescribed.

Token to be exhibited on motor vehicles.

9. (*1*) The Taxing Officer shall at the time of granting a receipt for the tax deliver to the person paying the tax a token of such form and containing such particulars as may be prescribed.

(2) Every person to whom such token is delivered shall cause it to be exhibited in the prescribed manner on the vehicle in respect of which the tax is paid.

It is for the person paying the tax to obtain delivery of the token at the time when the tax is paid to the Taxing Officer under the Bengal Motor Vehicles Tax Act, 1932. So far as the Taxing Officer is concerned, the requirements of the law are fulfilled if he does anything which has the effect of putting the token in the possession of the person paying the tax or of any person authorised by him. It is not intended by the provisions of the statute and the Rules framed under the statute, which are not in any way, *ultra vires*, that the Taxing Officer is to send the token to the persons paying the tax. The failure on the part of the accused to exhibit the token on the car resulting from his not obtaining delivery of the same from the Taxing Officer after the tax had been paid, was, therefore, an offence under the law and the accused was rightly convicted by the Magistrate for breach of rr. 12 and 13, Bengal Motor Vehicles Tax Rules, 1933. *R. C. Curties* v. *Emp.*, 36 Cr. L. J. 812 = 62 Cal. 169 = 155 I. C. 710 = A. L. R. 1935 Cal. 253 = 39 C. W. N. 56 = 1935 Cr. C. 305 = A. I. R. 1935 Cal. 212.

Contribution payable to the Corporation of Calcutta.

Ben. Act III of 1923

10. (*1*) The Local Government shall pay annually to the Corporation of Calcutta the sum of four and a half lakhs of rupees being approximately the net amount of taxes derived by the Corporation from the taxation of motor vehicles under the Calcutta Municipal Act, 1923, for the year ending on the 31st March, 1930, to compensate the said Corporation for the future loss of revenue under this head.

(*2*) The contribution fixed under sub-section (*1*) shall be paid in such instalments, in such manner and on such dates as the Local Government may determine.

Application of the proceeds of the tax.

11. (*1*) The proceeds of the tax shall be applied to the following objects only and in the following order :—

Firstly—the payment of costs incurred on account of the imposition and collection of the tax ;

Secondly—the payment to the Corporation of Calcutta of the sum specified in section 10 ;

Thirdly—the payment of any sums which have to be paid as interest upon loans raised for the purposes of expenditure on roads and the formation of a sinking fund when required ;

Fourthly—the payment of contributions to local authorities for the purposes of expenditure on the construction, maintenance and improvement of new or existing roads ;

Fifthly—generally, the construction, maintenance and improvement of new or existing roads

(*2*) The proceeds of the tax shall be entered in a separate account and shall be employed as a supplement to and not in substitution for any funds which would otherwise be expended on roads by the Local Government or by local authorities and the Local Government may in any year refuse contributions to be made under this section to any local

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Fourthly—the payment of contributions to local authorities for the purposes of expenditure on the construction, maintenance and improvement of new or existing roads ;

Fifthly—generally, the construction, maintenance and improvement of new or existing roads.

(*2*) The proceeds of the tax shall be entered in a separate account and shall be employed as a supplement to and not in substitution for any funds which would otherwise be expended on roads by the Local Government or by local authorities and the Local Government may in any year refuse contributions to be made under this section to any local authority

which has failed to allot for expenditure on roads during that year or to expend on roads during the previous year a sum equal to the average amount annually expended on roads by that local authority during the three years ending on the thirty-first day of March, 1930.

Explanation—"Roads" includes the slopes, berm and side-drains of a road, all bridges, culverts and causeways built on or across a road and ferries and footways.

Power to make rules.

12. (*1*) The Local Government may, subject to the condition of previous publication, make rules for carrying out the purposes of this Act.

(*2*) In particular and without prejudice to the generality of the foregoing power, the Local Government may make rules for all or any of the following purposes, namely :—

(*a*) to prescribe the form of any declaration, certificate, receipt or token, the particulars to be stated therein and the manner of exhibiting a certificate or token on a motor vehicle or trailer and the conditions in which such certificate or token shall be maintained,

(*b*) to prescribe what shall be deemed to be a year or a quarterly period for the purposes of section 4,

(*c*) to prescribe the powers and duties of the Taxing Officer and of the registering authority,

(*d*) to regulate the manner in which refunds or deductions or exemptions may be claimed, and

(*e*) to regulate the method of assessing and recovering the tax.

(*3*) All rules made under this section shall be published in the *Calcutta Gazette*.

Penalties for certain offences.

13. Whoever—

(a) keeps for use a motor vehicle without having paid the tax or additional tax in respect of such vehicle, or

(b) delivers a declaration or additional declaration wherein the particulars required by or under this Act to be therein set forth are not fully and truly stated,

shall be punishable with fine which may extend to one and a-half times, and, in the event of such person having been previously convicted of an offence under this Act or any rule made thereunder, with fine which may extend to twice the amount of the tax payable for the year for the motor vehicle in respect of which the offence is committed and the amount of any tax due shall also be recovered as if it were a fine.

Suspension of the certificate of registration.

"13A. If a Taxing Officer is satisfied that in respect of any motor vehicle—

(a) a declaration or additional declaration has not been delivered in accordance with the provisions of section 6, within one month of the date on which such declaration or additional declaration was due, or

(b) any tax or additional tax payable under this Act has not been paid within one month of the date on which *such tax was payable, or*

(c) any penalty imposed under sub-section (4) of section 4 has not been paid within one month of the date on which such penalty was imposed;

he may, notwithstanding anything contained in the Indian Motor Vehicles Act, 1914, or any rules made thereunder, *declare the certificate of registration* of such motor vehicle to be suspended and such certificate shall thereupon be deemed to be suspended until the whole amount of tax and penalty, if any, due in respect of such motor vehicle has been paid."

VIII of 1914.

Other penalties

14. Whoever contravenes any of the provisions of this Act or of any rule made thereunder shall, if no other penalty is elsewhere provided in this Act for such contravention, be punishable with fine which may extend to one hundred rupees, and in the eve

such person having been previously convicted of an offence under this Act or any rule made thereunder, with fine which may extend to two hundred rupees.

Trial of offences.

15. No court inferior to that of Presidency Magistrate or a Magistrate of the second class shall try any offence punishable under this Act.

Power of Local Government to exempt certain motor vehicles from the tax.

16. The Local Government may, by notification in the *Calcutta Gazette*, exempt either totally or partially any motor vehicle or class of motor vehicle from the tax.

Amendment of the Calcutta Municipal Act, 1923

Ben. Act III of 1923.

17. The Calcutta Municipal Act, 1923, is hereby amended to the extent and in the manner stated in the Second Schedule.

THE FIRST SCHEDULE.

(See *section 4.*)

Description of motor vehicles and rate of tax.

	Rate of tax payable for the year.
I.—Bicycles and Tricycles.	
Cycles (including motor-scooters and cycles with attachment for propelling the same by mechanical power) not exceeding eight hundredweight in weight unladen—	
(*a*) Bicycles—	
(*i*) not exceeding two hundred pounds in weight unladen ...	... Fifteen rupees.
(*ii*) exceeding two hundred pounds in weight unladen ...	... Twenty rupees.
(*iii*) if used for drawing a trailer or sidecar, in addition to the tax payable under (*i*) and (*ii*)	... Five rupees.
(*b*) Tricycles	... Thirty rupees.

II.—Vehicles for carrying passengers not plying for hire.

(*a*) Vehicles not measuring more than forty square feet over-all ... Forty rupees.

(*b*) Vehicles measuring more than forty square feet but not measuring sixty square feet ... ... Forty-eight rupees.

(*c*) Vehicles measuring sixty square feet and more than sixty square feet ... Seventy rupees.

Area to be measured by wheel base × track.

	Rate of tax for the year.	
	Vehicles fitted entirly with pneumatic tyres.	other vehicles.
III.—Vehicles for carrying passengers plying for hire.		
(*a*) Seating not more than eight persons.	Seventy-five rupees	One hundred rupees.
(*b*) Seating more than eight persons, in addition to the tax payable under (*a*), for every additional person that can thus be seated up to thirty.	Three rupees.	Four rupees.
(*c*) Seating more than thirty persons, in addition to the tax payable under (*a*) and (*b*), for every additional person that can thus be seated.	Two rupees ...	Four rupees.
IV.—Vehicles for transport of goods.		
(*a*) Not exceeding twelve hundred-weight in weight unladen	Fifty rupees ...	Seventy-five rupees.

such person having been previously convicted of an offence under this Act or any rule made thereunder, with fine which may extend to two hundred rupees.

Trial of offences.

15. No court inferior to that of Presidency Magistrate or a Magistrate of the second class shall try any offence punishable under this Act.

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(*i*) not exceeding two hundred pounds in weight unladen ... ... Fifteen rupees.

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II.—Vehicles for carrying passengers not plying for hire.

(*a*) Vehicles not measuring more than forty square feet over-all ... Forty rupees.

(*b*) Vehicles measuring more than forty square feet but not measuring sixty square feet ... ... Forty-eight rupees.

(*c*) Vehicles measuring sixty square feet and more than sixty square feet ... Seventy rupees.

Area to be measured by wheel base × track.

	Rate of tax for the year.	
	Vehicles fitted entirly with pneumatic tyres.	other vehicles.
III.—Vehicles for carrying passengers plying for hire.		
(*a*) Seating not more than eight persons.	Seventy-five rupees	One hundred rupees.
(*b*) Seating more than eight persons, in addition to the tax payable under (*a*), for every additional person that can thus be seated up to thirty.	Three rupees.	Four rupees.
(*c*) Seating more than thirty persons, in addition to the tax payable under (*a*) and (*b*), for every additional person that can thus be seated.	Two rupees ...	Four rupees.
IV.—Vehicles for transport of goods.		
(*a*) Not exceeding twelve hundred-weight in weight unladen	Fifty rupees ...	Seventy-five rupees.

(*b*) Exceeding twelve hundred-weight but not exceeding one ton in weight unladen.	One hundred rupees.	One hundred fifty rupees.
(*c*) Exceeding one ton, but not exceeding two tons in weight unladen.	One hundred and twenty-five rupees.	One hundred and seventy-five rupees.
(*d*) Exceeding two tons, but not exceeding three tons in weight unladen.	One hundred and fifty rupees.	Two hundred rupees.
(*e*) Exceeding three tons, but not exceeding four tons in weight unladen.	Two hundred rupees.	Two hundred and fifty rupees.
(*f*) Exceeding four tons, but not exceeding five tons in weight unladen.	Three hundred rupees.	Three hundred and fifty rupees.
(*g*) Exceeding five tons ...	Four hundred rupees.	Five hundred rupees.
(*h*) If used for drawing a trailer in addition to the tax payable under (*a*) to (*g*), for each trailer.	Fifty rupees ...	Fifty rupees.

"Provided that, if one trailer is used with more than one vehicle, only one tax shall be chargeable under (*h*) in respect of such trailer for all such vehicle"

THE SECOND SCHEDULE.

(*See section 17.*)

Amendments to the Calcutta Municipal Act.

1. In section 3—
   (*a*) in clause (*13*) the brackets and words "(other than a motor bicycle or motor tricycle)" shall be omitted, and
   (*b*) at the end of clause (*14*) the words "but does not include any wheeled vehicle which is propelled by mechanical power or its trailer" shall be added.

2. For sub-section (*1*) of section 184 the following shall be substituted, namely :—

"(*1*) The fee payable for each registration of a cart shall be four rupees and an additional charge of one rupee shall also be payable in each case for the number-plate to be affixed to the cart :

Provided that, if such number-plate is returned to the municipal office in serviceable condition, the said additional charge shall be refunded or set off against the charge leviable for a new number plate."

3. Item Nos. 1 to 5 in Schedule VIII shall be om itted.

NOTIFICATION.

Minister-in-charge . The Hon'ble Sir Bijoy Prasad Singh Roy, Kt.

No. 5859L. S.-G.—31st October 1933.—In exercise of the power conferred by section 12 of the Bengal Motor Vehicles Tax Act, 1932 (Bengal Act I of 1932), the Government of Bengal (Ministry of Local Self-Government) are pleased to make the following rules in supersession of the Bengal Motor Vehicles Tax Rules, 1932, published with Government notification No. 1662L.S -G., dated the 6th April 1932 :—

THE BENGAL MOTOR VEHICLES TAX RULES, 1933

1. **Title.**—These rules may be called the Bengal Motor Vehicles Tax Rules, 1933.

2. **Definitions**—In these rules, unless there is anything repugnant in the subject or context,—

(*a*) "area" means an area specified by the Local Government under Section 3 of the Act ;

(*b*) "Commissioner" means the Commissioner of Police, alcutta ;

(*c*) "Form" means a form appended to these rules ;

(*d*) "general number" means a number issued under the provisions of sub-rule 6 of rule 4 of the Calcutta and Howrah Motor Vehicles Rules, 1930 ;

(*e*) "owner" means the person registered as such by the Commissioner and includes a person having the use of a motor vehicle under hiring or hire-purchase agreement ;

(*f*) "pneumatic tyre" means a tyre—

(*i*) provided with a continuous closed chamber containing air at a pressure substantially exceeding atmospheric pressure when the tyre is in the condition in which it is normally used but is not subjected to any load ;

(*ii*) capable of being inflated by the driver of the vehicle without removal from the wheel or vehicle ; and

(*iii*) the sides of which, when the tyre is deflated and subjected to a normal load, collapse ;

(*g*) "penalty" means a penalty imposed by the Taxing Officer under the provisions of sub-section (*4*) of section 4 of the Act ;

(*h*) "refund" means a refund under the provisions of section 4 or section 5 of the Act ;

(*i*) "the Act" means the Bengal Motor Vehicles Tax Act, 1932 ;

(*j*) "token" means a token under section 9 of the Act and described in Form D (Bengal Form No. 330E), of which all entries have been filled in by the Taxing Officer save as prescribed under rule 10.

A public service vehicle licence granted under the Calcutta and Howrah Motor Vehicles Rules, 1930, shall be deemed to be a token under the Act and these rules.

3. **Method of paying tax.**—The tax shall be paid to the Taxing Officer of the area in which the vehicle is kept—

(*a*) in *Calcutta* at his office, in cash or by cheque on a Calcutta clearing bank; and

(*b*) Outside Calcutta through the treasury or in such other manner as the Taxing Officer may allow. If payment is made through a treasury or a branch of the Imperial Bank of India, challans should be made out in triplicate and the triplicate copy should be forwarded to the Taxing Officer as proof of payment.

4. **Declarations.**—*The declaration referred to in sub*-section (*1*) of section 6 of the Act shall be in Form A (Bengal Form No. 330C) and shall be delivered to the Taxing Officer *by the person making the payment.*

5. The additional declaration referred to in sub-section (*2*) of section 6 of the Act shall be in Form B (Bengal Form No. 330D) and shall be delivered to the Taxing Officer by the person making the payment of the additional tax.

6. A separate declaration or additional declaration shall be presented to the Taxing Officer in respect of each vehicle.

7. Every declaration and additional declaration shall be filed in the office of the Taxing *Officer.*

8. **Checking of declaration.**—The Taxing Officer shall satisfy himself that every declaration or additional declaration delivered to him is complete in every respect and that the amount already paid or now tendered to him in payment of the tax is the amount due on the vehicle.

9. **Grant of receipt.**—(*1*) When satisfied that the amount tendered is correct, the Taxing Officer shall accept payment of the tax and grant a receipt in Form C (Bengal Form No. 39) or retain as a voucher one copy of the treasury challan as the case may be.

(*2*) *If payment has already been made*—

(*a*) through a treasury or a branch of the Imperial Bank of India, the duplicate chalan will serve

as a receipt and the triplicate shall be retained by the Taxing Officer as a voucher;

(b) in a Magistrate's court or after issue of a distress warrant, a peremptory cash receipt shall be given in the following form and the Magistrate's receipt given under rule 23 shall be retained by the Taxing Officer as a voucher :—

Bengal Form No. 3581.

High Court Civil Miscellaneous Form No. (M.) 128.

High Court Criminal Miscellaneous Form No. (M.) 21.

10. **Grant of token.**—When the Taxing Officer is satisfied that the tax has been paid for a period not yet expired and that the registration of a motor vehicle for which it is paid is valid, he shall deliver to the person who has paid the tax a token in Form D (Bengal Form 330E).

11. When a token is issued for a vehicle of which the registration is still pending with the Commissioner, the Taxing Officer shall leave the item relating to the registered number blank. On receipt of the certificate of registration, the owner of the vehicle shall produce the token together with the certificate of registration before the Taxing Officer who shall thereupon enter the registered number of the vehicle on the token and in his registers.

12. **Token to be exhibited.**—The token shall be attached to and carried on the vehicle or trailer in the manner provided in rule 13 at all times when the vehicle or trailer is in use.

13. **Manner of exhibiting token.**—The token shall be carried in a holder made of metal and of weather-proof construction. The holder shall be circular and conform to the following specification :—

Token tray. The token tray shall be of sheet metal of a size to fit the token neatly and of a suitable thickness. It shall have a turned up edge of sufficient depth to hold the token and shall be provided with a stout cover of transparent

white glass, or shall be so designed as to fit against the wind screen, which must then be of transparent white glass, in such a manner that the glass of the screen serves a a cover.

Ring cover.—Unless the token tray fits against the wind-screen glass in the above manner, there shall be a circular ring of sheet metal shaped to fit down closely on the tray and adapted for fixing by screws, bolts or otherwise to the vehicle in the prescribed position. A rubber packing ring shall be arranged to fit between the ring cover and cover glass and tray, or between the glass of the wind-screen and the tray, so as to render the whole carrier weather-proof.

Dimensions.—The aperture within the ring cover shall clearly exhibit the whole of the token and shall have a diameter of approximately 2⅜ths inches.

The token shall be fitted on the vehicle in such a position that it shall be clearly visible in daylight to a person standing beside the vehicle in front of, or level with, the driver's seat.

Note.—As it has been found that tokens often fade and become illegible if regularly exposed to direct sunlight, owners are recommended to have them fitted inside the vehicle on the instrument board. Their particular attention is called to the provisions of rule 15 which make it illegal to use an illegible token.

14. **Defacing token.**—No person shall alter, deface, mutilate or add anything to the token or exhibit a token on a vehicle other than the vehicle mentioned in the token.

15. **Use of imitation and illegible tokens forbidden.**—No person shall exhibit in the manner provided in rule 13 any imitation of a token or use on a vehicle any token which has become illegible.

16. **Responsibility of owner for token.**—If the token is lost, destroyed, defaced or altered or has become illegible, the owner shall immediately report the facts to the Taxing Officer who issued the token.

17. **Duplicate token.**—If the Taxing Officer is satisfied that the original token issued by him has been lost, destroyed, defaced or altered or has become illegible, he shall on payment by the owner of a fee of Rs. 5 issue a duplicate token and shall grant a receipt in Form C (Bengal Form No. 39) unless payment has been made as provided in clause (*a*) of sub-rule (2) of rule 9.

18. If an original token that has been reported lost is found after the duplicate has been issued, the owner of the vehicle shall take all reasonable steps to regain the original and surrender it to the Taxing Officer. No refund shall be made of the fee paid under rule 17.

19. Every token shall be returned to the Taxing Officer either on its expiry or at the time of payment of the tax for the subsequent year or quarter, when it shall be attached to the declaration in Form A (Bengal Form No. 330C) relating thereto. It shall be defaced by him and filed in his office with the declaration, if any.

20. **Tokens for vehicles exempt from tax.**—Owners or officers in charge of motor vehicles who claim exemption from tax under the provisions of rule 30 shall fill in a declaration form in Form A (Bengal Form No. 330C) and forward it to the Taxing Officer together with satisfactory proof that they are entitled to exemption.

On receipt of such proof the Taxing Officer shall issue, for not more than a year, a tax-free token on which shall be entered under the heading "class" the word "free."

20A. **Token books.**—(*1*) On receipt of books of tokens from the Jail Department the Taxing Officer himself or a gazetted officer under his orders will count the tokens contained in each book and will give a certificate on the cover of the book as to the number of tokens found to be contained in it.

(*2*) The books of tokens shall be kept under lock and key, and no more be issued than are actually required for immediate use.

21. **Quarterly periods.**—The quarterly periods referred to in section 4 of the Act shall be the four periods beginning on the—

first day of April,
first day of July,
first day of October, and
first day of January,

and ending on the—

last day of June,
last day of September,
last day of December, and
last day of March, respectively.

22. **Year.**—A year shall consist of any four consecutive quarters.

23. **Mode of recovery of arrear tax by the court.**—(*1*) In prosecuting any person under the provisions of section 13 or section 14 of the Act, the Taxing Officer shall forward with his report to the Magistrate a statement in Form I (Bengal Form No. 3301).

(*2*) If the trying Magistrate convicts the accused he shall, at the time of passing orders, assess the tax due, direct the payment of it by the accused, and enter the amount in Form I (Bengal Form No. 3301) under the heading "order of the trying Magistrate "

(*3*) If the tax so assessed is paid in court the trying Magistrate shall issue a separate receipt for it in the following from, note the payment in Form I under the appropriate heading, attesting it by his seal, and make the form over to the accused with instructions to present it to the Taxing Officer. The Taxing Officer shall then issue a token if the payment covers a period that has not yet expired.

Bengal Form No. 3581.

High Court Civil Miscellaneous Form No. (M.) 128.

High Court Criminal Miscellaneous Form No. (M.) 21.

(*4*) If the tax is not paid in court, the Magistrate shall take

17. **Duplicate token.**—If the Taxing Officer is satisfied that the original token issued by him has been lost, destroyed, defaced or altered or has become illegible, he shall on payment by the owner of a fee of Rs. 5 issue a duplicate token and shall grant a receipt in Form C (Bengal Form No. 39) unless payment has been made as provided in clause (*a*) of sub-rule (2) of rule 9.

18. If an original token that has been reported lost is found after the duplicate has been issued, the owner of the vehicle shall take all reasonable steps to regain the original and surrender it to the Taxing Officer. No refund shall be made of the fee paid under rule 17.

19. Every token shall be returned to the Taxing Officer either on its expiry or at the time of payment of the tax for the subsequent year or quarter, when it shall be attached to the declaration in Form A (Bengal Form No. 330C) relating thereto. It shall be defaced by him and filed in his office with the declaration, if any.

20. **Tokens for vehicles exempt from tax.**—Owners or officers in charge of motor vehicles who claim exemption from tax under the provisions of rule 30 shall fill in a declaration form in Form A (Bengal Form No. 330C) and forward it to the Taxing Officer together with satisfactory proof that they are entitled to exemption.

On receipt of such proof the Taxing Officer shall issue, for not more than a year, a tax-free token on which shall be entered under the heading "class" the word "free."

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22. **Year.**—A year shall consist of any four consecutive quarters.

23. **Mode of recovery of arrear tax by the court.**—(*1*) In prosecuting any person under the provisions of section 13 or section 14 of the Act, the Taxing Officer shall forward with his report to the Magistrate a statement in Form I (Bengal Form No. 3301).

(*2*) If the trying Magistrate convicts the accused he shall, at the time of passing orders, assess the tax due, direct the payment of it by the accused, and enter the amount in Form I (Bengal Form No. 3301) under the heading "order of the trying Magistrate."

(*3*) If the tax so assessed is paid in court the trying Magistrate shall issue a separate receipt for it in the following from, note the payment in Form I under the appropriate heading, attesting it by his seal, and make the form over to the accused with instructions to present it to the Taxing Officer. The Taxing Officer shall then issue a token if the payment covers a period that has not yet expired.

Bengal Form No. 3581.
High Court Civil Miscellaneous Form No. (M.) 128.
High Court Criminal Miscellaneous Form No. (M.) 21.

(*4*) If the tax is not paid in court, the Magistrate shall take

all possible steps to realise it. When it is realised he shall proceed as directed in sub-rule (3).

(5) The tax realised shall be credited to "XXVI—Miscellaneous Departments."

24. **Suspension of registration.**—If a Taxing Officer declares the certificate of registration of a motor vehicle to be suspended under the provisions of section 13A of the Act, he shall inform the owner that the registration of his motor vehicle has been suspended and that the use of the vehicle is prohibited until the suspension is removed.

On receipt of the tax and any penalty due, the Taxing Officer shall declare that the suspension of registration is removed.

A copy of all orders regarding such suspension of registration and release from suspension shall be forwarded by the Taxing Officer to the Commissioner and District Magistrate concerned for entry in the registration register.

25. **Method of calculating tax on bicycles, trucks and vehicles for transport of goods.**—For the purpose of calculating the tax payable on bicycles and vehicles for the transport of goods, the weight of the vehicle unladen, including all parts, equipments stores, fuel, water and accumulators, which are necessary for or ordinarily used with the vehicle or trailer when working, shall be taken into account, provided that where alternative parts or bodies are used the heaviest shall be taken for the purpose of calculating the weight.

26. Such unladen weight shall be determined in such manner as the Local Government may direct.

27. Whenever an owner pays a tax in respect of a trailer under clause (h) of Part IV of the First Schedule to the Act, the Taxing Officer shall issue a token on which under the heading "vehicle" the word "trailer" shall be entered. Such token shall be exhibited on the trailer when it is in use.

28. **Method of calculating tax on vehicles for private use.**—For the purpose of calculating the amount of tax payable

on vehicles for carrying passengers not plying for hire, th wheel track, *i.e.*, the distance between back wheels from th centre of each tyre shall be multiplied by the wheel base, *i e.* the distance from the central point of the front axle to th centre point of the back axle.

29. **Method of calculating tax on vehicles for carryin passengers plying for hire**—For the purpose of calculatin the amount of tax payable in respect of vehicles for carryin passengers plying for hire, the seating capacity shall be deter mined as follows :—

(*a*) where separate seats are provided for each passenger one person shall be counted for each separate seat excludin the driver's seat ;

(*b*) where the vehicle is fitted with continuous seats one person shall be counted for each complete length of 15 inches in a straight line along the length of the front of each seat, excluding the driver's seat

30. The following motor vehicles are exempt from the payment of the tax :—

(*a*) unregistered motor vehicles kept for sale by bona fide dealers in such vehicles even when used on the public road under such dealers' general number ;

(*b*) motor vehicles belonging to the Government and maintained for the use of the Governor of Bengal or his staff or household ;

(*c*) motor vehicles which are the property of the Government of Bengal and which are certified by the head of the department concerned to be used ordinarily for Government purposes;

(*d*) motor vehicles which are the property of the Government and maintained for military purposes ;

(*e*) motor vehicles certified by Officers Commanding Auxiliary Force Units to be maintained by enrolled persons in their capacity as members of such units under a general or special order by a competent authority.

(*f*) motor vehicles certified by Officers Commanding Territorial Force Units to be maintained by persons in their capacity as members of the Indian Territorial Force as authorised by regulations made under section 14 of the Indian Territorial Force Act, 1920 (XLVIII of 1920).

(*g*) motor cars belonging to the General Officer Commanding, the Presidency and Assam District, and to the following officers on his staff :—

(*i*) General Staff Officer, second grade ;

(*ii*) Deputy Assistant Adjutant-General ;

(*iii*) Deputy Assistant Quartermaster-General ;

(*iv*) Staff Captain, Presidency and Assam District, Calcutta ;

(*v*) Embarkation Commandant, Calcutta ;

when certified by the General Officer Commanding to be used ordinarily for the efficient performance of their military duties ;

(*h*) motor vehicles certified by the Inspector-General of Police, Bengal, or the Commissioner to be ordinarily used for police purposes ;

(*i*) motor vehicles maintained by any authority for the purpose of a fire brigade ;

(*j*) motor ambulance cars and travelling dispensaries ;

(*k*) motor conservancy cars and watering carts maintained by a local authority or maintained under contract for a local authority and exclusively used for conservancy or watering purposes ;

(*l*) motor lorries, tractors and trailers which belong to the Calcutta Improvement Trust and are used exclusively for their work ;

(*m*) motor vehicles which are certified by the Chief Executive Officer to be the property of the Calcutta Corporation and to be used exclusively for Corporation work ;

(*n*) motor lorries of the Kharagpur Station Committee used for conservancy and fire extinguishing purposes ;

(*o*) motor cars belonging to the Consular Officers de Carriere of countries which grant reciprocity in such matters ;

(*p*) motor cars and lorries which belong to the Commissioners for the Port of Calcutta and are used exclusively for their work ;

(*q*) the motor vehicle of the Jewish Burial Board ;

(*r*) motor lorry belonging to the Chairman, Assam Bengal, Railway Station Committee, Pahartali, Chittagong, and solely used for sanitation purposes :

31. **Vehicles coming into Bengal.**—(*1*) A person bringing a motor vehicle into Bengal and keeping it therein for use shall, within one week of its arrival, if he has not paid the tax due thereon in Bengal, report to the Taxing Officer of the area within which the vehicle is kept the date on which such motor vehicle has been brought into the province and unless exempted under rule 32 pay to him any tax due thereon.

(*2*) Any person who keeps a motor vehicle outside Bengal for use within Bengal shall pay the tax due thereon to the nearest Taxing Officer in Bengal unless such Taxing Officer is satisfied that the car is not used habitually in Bengal.

(*Note.*—A person who keeps a motor vehicle outside Bengal for use inside Bengal is liable for payment of tax under the Act).

32. **Vehicles coming temporarily into Bengal.**—(*1*) If a person, making a temporary stay in Bengal who brings a motor vehicle with him into the province and keeps it for his personal use therein for a continuous period not exceeding thirty days, delivers to a Taxing Officer within one week of his arrival in the province a written notice of the date of his arrival with a description of such vehicle, the Taxing Officer shall, if satisfied that such notice and description are correct and that the vehicle is not habitually used in Bengal and that it is not to be let for hire in Bengal, declare such person to be exempt from liability to pay the tax :

Provided that if such person keeps the vehicle in Bengal for any period longer than thirty days he shall be subject to the ordinary rules and shall be liable for the payment of the tax due in Bengal.

(2) After declaring such person to be exempt from liability to pay tax, the Taxing Officer shall grant to him a token valid for thirty days from the date of the arrival of the motor vehicle. Such token shall be clearly marked "temporary" under the heading class.

33. **Fractions of an anna to be neglected.**—For the purpose of calculating the amount of tax payable on a vehicle or any refund due to the owner of a vehicle fractions of an anna shall be counted as an anna in favour of the Taxing Officer.

34. An owner who wishes to obtain suspension of registration for a period during which his motor vehicle is to be out of use, shall submit an application in writing through the Taxing Officer to the Commissioner giving all details as to the period and the reason for which the vehicle will not be used and the Commissioner, if satisfied, shall issue a suspension notice for such period as he thinks fit and may order the surrender of the registration certificate.

35. **Refunds.**—A person claiming a refund of tax under section 4 or section 5 of the Act, shall present to the Taxing Officer who issued the token on receipt of such tax a declaration in Form E (Bengal Form No. 330F) together with satisfactory proof of the admissibility of the refund.

36. In the case of a refund claimed under section 5 of the Act a certificate from the registering authority stating that the registration certificate has been surrendered or that the renewal of the registration of the vehicle has been refused shall be deemed to be satisfactory proof.

37. No refund of tax shall be made unless the token in respect of which the claim is made has been surrendered to the Taxing Officer to whom the claim for a refund is made.

38. When a refund has been made under the provisions of sub-section (3) of section 4 of the Act, a fresh token shall be issued for any unexpired period for which tax has been paid and for which tax has not been refunded or remitted.

39. On receipt of satisfactory proof that the refund is admissible, the Taxing Officer shall calculate the amount of refund due and make over to the owner a certificate in Form F (Bengal Form No. 3558).

40. The person to whom a certificate in Form F (Bengal Form No. 3558) has been granted shall on presentation of such certificate at the nearest treasury within ten days from the date of issue, be entitled to a refund of the sum mentioned therein.

41. **Register of receipts of motor tax.**—The Taxing Officer shall maintain a register of receipts of motor vehicles tax in Form G (Bengal Form No. 330G). Every amount for which a receipt under rule 9 has been granted shall be entered in this register under the appropriate head.

42. **Refund register.**—The Taxing Officer shall maintain a register of refunds under the Act in Form H (Bengal Form No. 330H). Every amount for which a certificate in Form F (Bengal Form No. 3558) has been granted shall be entered in this register under the appropriate head.

43. **Verification of accounts**—The register of motor tax and register of refunds shall be closed at the end of each quarterly period and a statement showing the excess of receipts over refunds shall be prepared in duplicate. Two copies of this quarterly statement of receipts and refunds shall be forwarded to the Treasury Officer for verification and check, and one of these shall be returned by him to the Taxing Officer who shall file it in his office.

44. **Quarterly returns.**—A copy of the quarterly statement shall be forwarded to the Taxing Officer, Calcutta Area, each quarter.

The Taxing Officer, Calcutta Area, shall consolidate the

quarterly returns and submit to the Local Government such statements as may from time to time be required by the Local Government.

45. **Records.**—The register of tax (Form G) (Bengal Form No. 330G) and refund register (Form H) (Bengal Form No. 330H) shall be kept for five years.

Duplicates of cash receipts (Form C) (Bengal Form No. 39), treasury chalans, counterfoils of tokens (Form D) (Bengal Form No. 330E), declarations (Forms A and B) (Bengal Forms Nos. 330C and 330D) statements in Form I (Bengal Form No. 330I), quarterly returns and claims for refunds (Form E) (Bengal Form No. 330F) shall be destroyed annually after audit.

46. All communications by post to the Taxing Officer shall be addressed to the officer appointed as such under section 3 by his ordinary official designation with the addition of the words "Motor Vehicles Tax Department."

47. A Taxing Officer may for the purpose of expediting the performance of his duties under the Act give notice of a particular office or a particular day, or hour or particular hours for the payment of the tax and for the hearing of applications made under the Act.

48. **Appeal against the decision of a Taxing Officer.**—An appeal shall lie against the orders of a Taxing Officer on points regarding which his orders are not final under the Act and to the officer immediately superior to such Taxing Officer.

FORM A (Bengal Form No. 330C).

(*See* rule 4.)

Declaration under section 6 (1) of the Bengal Motor Vehicles Tax Act, 1932.

I,.......................... ....residing at............................ hereby declare that I keep for use a motor vehicle of the following description within the.......................area :—

(1) Registered number..
(2) Type of vehicle..
(3) Whether vehicle has pneumatic tyres....................
(4) Purpose for which used...
(5) Number of seats (including dicky seat)..................
(6) Unladen weight...
(7) Wheelbase ft. inches × track ft. inches = sq. feet.

I hereby declare that the above particulars are true and *that the vehicle is not and shall not be used to draw a trailer or side car/that the vehicle is not and shall not be let for carrying passengers for hire or reward. Rs................................ *being tax due on the vehicle for the period*.......................... to............. ......is tendered herewith.

Declarant.

Dated.......................*193* .

Order of Taxing Officer.

Certified that the rate of tax payable for the year on the above motor vehicles is Rs ....and that Rs... ....is due for the period... .... to...........................

Taxing Officer.

Dated.........................*193* .

The tax Rs...........................mentioned above has been duly credited, vide receipt No............... ...., dated the...................... .....193 .

Cashier.

Dated... ....*193* .

---

*Note.—Strike out any item which is not applicable.

... Token No.......................... .. to expire on.................
has been issued to-day...

Taxing Officer.

Dated..............................193 .

FORM B (Bengal Form No. 330D).

(*See* rule 5.)

Additional declaration under sub-section (2) of section 6 of the Bengal Motor Vehicles Tax Act, 1932.

I,............................residing at................................
hereby declare that I have made on (date)..........................
the following alterations in my motor vehicle registered No. ..
............thereby making it liable to a higher rate of tax under the Motor Vehicles Taxation Bill, 1932. The token granted in respect of vehicle No..................is hereby surrendered and I tender Rs..........................in payment of the additional tax due up to............................

Description of alterations.

Declarant.

Dated.......................193 .

Order of Taxing Officer.

Certified that Rs.......................for the period.................
to..........................is due.

Taxing Officer.

Dated....................193 .

The tax Rs......................mentioned above has been duly credited, vide receipt No............., dated the..............193 .

Cashier.

Dated.....................193 .

Token No.................to expire on .... has been issued to-day.

Taxing Officer.

Dated..................... .....193 .

FORM C (Bengal Form No. 39).

(*See* rule 9.)

Government of Bengal.

......................Department.

No.

Dated the ....19 .

Received from................. ....
the sum of Rs ....
....
on account of.. .. ..
credited to.................................... . ...
Rs.............. ....
....

Signature. . . ..

Designation............................

Cashier..........................

FROM C (DUPLICATE).

Government of Bengal.

.......................Department.

No.

Dated the.....................19 .

Received from... ....
the sum of Rs....... ....
....
on account of......... ....
credited to.................... ....
Rs..
....

Signature............................

Designation........................

Cashier...........................

FORM D (Bengal Form No. 330E).

(*See* rule 10.)

Counterfoil Token.

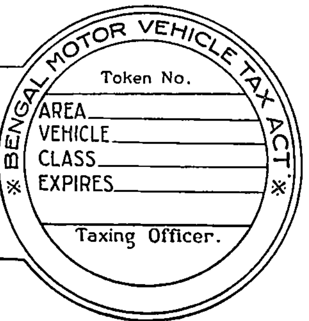
BENGAL MOTOR VEHICLES TAX ACT, 1932.

.. ..Area.

Token No ....granted to.........................in respect of vehicle No... . .....on which tax has been paid under sub-part ....of part..... ...of Schedule I for the period............to ...., vide receipt/chalan No...... dated......... ....

....

Clerk.   *Taxing Officer.*



Description.

The token shall consist of a circular piece of cardboard or stout paper with a diameter of 2 11/16ths inches on which shall be entered :—

(1) the number of the token,

(2) the area within which the token has been granted,

(3) the registered number of the vehicle in respect of which the token has been granted,

(4) the sub-part and part of the first schedule under which the tax has been paid, e.g., a private car measuring 48 square feet will have "II (b)" entered under the heading "Class",

(5) the date on which the tax expires, and

(6) the signature of the Taxing Officer or some other officer duly authorised to sign for the Taxing Officer.

FORM E (Bengal Form No. 330F).

(*See* rule 35.)

Application for a refund under the Bengal Motor Vehicles Tax Act, 1932.

I, ..., residing at................................., owner of motor vehicle registered No............, having paid the tax on the motor vehicle register No..............for the period ....,to......... ....hereby claim a refund of the tax on the following grounds :—

*(*a*) That my vehicle registered No......... ..was not used from................. ....to... ....

(*b*) That the registration of my vehicle No...........was refused on.............................

(*c*) That the registration certificate in respect of vehicle registered No.........was surrendered on.........

*Note.—Strike out any clause which is not applicable.

Satisfactory proof of my claim is attached herewith.

....

Applicant.

Dated...... ....193 .

Order of Taxing Officer.

Taxing Officer.

Dated.................193 .

. Refund form No.............., dated................................, payable for Rs............made over to claimant.

....

Signature of claimant.

Cashier.

Dated.......................193 .

Dated................................193 .

FORM F (Bengal Form No. 3558).

(*See* rule 39.)

Form of order for refunds of revenue.

District of					Refunds of revenue.										Voucher No. of List of payment for 193 .
Head of service chargeable.					I. Refunds and drawbacks.										
In whose name credited.	On what account received.	Amount realised.			Date of payment into treasury	Amount in which included and head to which credited.			Treasury Officer's signature in token of verification of treasury credit.	Name of payee.	Amount to be refunded.			Reasons and authority for refund.	Certificate of departmental note of refund.
1	2	3			4	5			6	7	8			9	10
		Rs.	a.	p.		Rs.	a.	p.			Rs.	a.	p.	easons.	This order of refund has been registered and noted against the original receipt entry in the departmental account under my initials, and previous order for refund of the same sum has not been issued. Signature........ Designation .... Date........

														Authority. Sanctioned. Controlling officer or ....'s No.................. dated .....

Received payment.

Claimant's signature.

The ....193 .

Examined.

Stamp, if required.

Passed for payment.

Magistrate or other Officer.

Pay Rupees............( ) only.

Accountant

Officer in charge of Treasury.

Note 1.—This order is not payable more than ten days after date without a renewal enfacement by the court, and it absolutely lapses and ceases to have effect on the 31st March next.

Note 2.—No useful check can be exercised over refunds of revenue in the account office, except in cases where full details of the collections of such revenue are received in that office, either in the treasury accounts or other documents, e.g., fine statements. It is, therefore, essential that every refund should be noted against the original credit in the departmental accounts, where all sums are entered in detail. This voucher for refunds provides for a certificate of such note having been made. The officer who received the amount should fill in columns 1 to 5 of the form and sign the certificate in column 10, while the Treasury Officer or the Sub-Treasury Officer should verify the credit by means of the particulars on columns 4 and 5 and affix his signature in column 8 in token of his having done so. The sanction for the refund may either be given on the voucher itself or quoted in it, a certified copy being attached when such orders are not separately communicated to the audit office.

Form G (Bengal Form No. 330G)

(*See* rule 41.)

Register of receipts under the Motor Vehicles Tax Act, 1932.

......................Area.

Yearly serial number.	Chalan number	Received from—	Register No. and description of vehicle	Period for which tax is paid		Amount	Remarks.
				From—	To—		
						Rs. a. p.	

FORM H (Bengal Form No. 330H).

(*See* rule 42.)

Register of refunds under the Motor Vehicles Tax Act.

..........................Area.

Yearly serial number	Number of refund voucher	Payable to—	Cause of refund.	Amount.	Remarks.
				Rs. a. p.	

FORM I (Bengal Form No. 8301).

(*See* rule 23.)

Form of Statement to Magistrate under sections 13 and 14 of Bengal Act I of 1932.

I......................., Taxing Officer,........................... Area, hereby report that to the best of my knowledge............ residing at..............keeps for use the undermentioned motor vehicle on which the Tax/Additional Tax due for the period from..................to...............has not been paid :—

(1) Registered No..................
(2) Type of vehicle...............
(3) Whether vehicle has pneumatic tyres............
(4) Purpose for which used...............
(5) Number of seats (including dicky seat)............
(6) Unladen weight.....................
(7) Wheel base.........ft.........inches × track........... ft............inches............sq. ft.

In my opinion Rs.............(in words)... ....is the rate of tax payable for the year on the above vehicle and that Rs. ....(in words) ....is due for the period.

Taxing Officer.

Dated..............193 .

Order of the Trying Magistrate.

Certified that Rs............as tax is due on the above-mentioned vehicle............

Magistrate.

Dated......... ..193 .

The tax Rs................(in words)...........mentioned above has been duly credited, vide receipt No........., dated ....

Countersigned

Seal of Court

Cashier.

Magistrate.

Dated...........193 .

Token No...........to expire on..............has been issued to-day.

Taxing Officer.

Dated......... ....193 .

H. P. V. TOWNEND,
Secy. to the Govt. of Bengal.

ACT NO. VIII OF 1914.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(*Received the assent of the Governor-General on the 28th February, 1914*).

An act to consolidate and amend the law relating to Motor Vehicles in British India.

WHEREAS it is expedient to consolidate and amend the law relating to motor vehicles in British India; It is hereby enacted as follows :—

PART I.

PRELIMINARY.

Short title, extent and commencement.

1. (*1*) This Act may be called the Indian Motor Vehicles Act, 1914.

(*2*) This Act, except Part III thereof, extends to the whole of British India, including British Beluchistan, the Sonthal Parganas and the Pargana of Spiti. Part III extends in the first instance only to the Provinces of Madras, Bombay, Bengal, the United Provinces of Agra and Oudh, the Punjab, Burma, Bihar and Orissa, the North-West Frontier Province and Delhi. The Local Government of any other Province may, by notification in the local official Gazette, extend Part III to the whole or any part of such province.

(*3*) It shall come into force on such date as the Governor General in Council, by notification in the Gazette of India, may direct.

Definitions.

2. "Motor vehicle" includes a vehicle, carriage or other means of conveyance propelled, or which may be propelled, on a road by electrical or mechanical power either entirely or partially ;

"prescribed" means prescribed by rules under this Act ;

"public place" means a road, street, way or other place, whether a thoroughfare or not, to which the public are granted access or over which they have a right to pass.

PART II.

Provisions of General Applications.

3. (*1*) No person under the age of eighteen years shall drive a motor vehicle in any public place.

Prohibition of driving motor vehicles by persons under 18.

(*2*) No owner or person in charge of a motor vehicle shall allow any person under the age of eighteen years to drive the same in any public place; and in the event of a contravention of sub-section (*1*), the Court may presume that the motor vehicle was driven with the consent of the owner or person in charge.

4. The person in charge of a motor vehicle shall cause the vehicle to stop and to remain stationary so long as may reasonably be necessary—

Duty to stop vehicle for regulating traffic and in case of accident.

(*a*) when required to do so by any police-officer for the purpose of regulating traffic or of ascertaining his name and address with a view to prosecuting such person under this Act or for any purpose connected with the enforcement of the provisions of this Act or the rules thereunder, or

(*b*) when required to do so by any person having charge of any animal if such person apprehends that the animal is, or will be, alarmed by the motor vehicle, or

(*c*) when he knows or has reason to believe that an accident has occurred to any person or to any animal or vehicle in charge of a person owing to the presence of the motor vehicle and he shall also, if so required, give his name and address and the name and address of the owner of such motor vehicle.

5. Whoever drives a motor vehicle in a public place recklessly or negligently, or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including

Reckless driving.

the nature, condition and use of the place and the amount of traffic which actually is at the time, or which might reasonably be expected to be, in the place, shall, on conviction, be punishable with fine which may extend to five hundred rupees.

PART III.

LICENSING AND CONTROL.

Licensing of drivers.

6. No person shall drive a motor vehicle in a public place unless he is licensed in the prescribed manner, and no owner or person in charge of a motor vehicle shall allow any person who is not so licensed, to drive it :

Provided that, subject to rules made by the Local Government in this behalf, this section shall not apply to a person receiving instruction in driving a motor vehicle.

Transfer of license

7. The holder of a license shall not allow it to be used by any other person.

Production of license.

8. The driver of a motor vehicle shall produce his license upon demand by any police-officer.

Extent of validity of license to drive.

9. Every license to drive a motor vehicle shall be valid in such area as may be specified therein :

Provided that no license shall specify any area outside the province in which it is granted, unless it is issued * * * in accordance with such conditions and restrictions as the Governor General in Council may impose.

Registration of motor vehicles.

10. (1) The owner of every motor vehicle shall cause it to be registered in the prescribed manner.

(2) Such registration shall be valid in such area as may be specified in the certificate of registration :

Provided that no certificate of registration shall be valid outside the province in which it is granted unless it is issued in accordance with such conditions and restrictions as the Governor General in Council may impose.

(e) prescribing the conditions subject to which, and the fees (if any) on payment of which, motor vehicles may be let or plied for hire in public places, generally or in any particular public place ;

(f) prescribing the precautions to be observed when motor vehicles are standing in any public place ;

(g) limiting the speed at which motor vehicles may be driven generally or in any particular public place ;

(h) prohibiting or regulating the driving of motor vehicles in public places, where their use may, in the opinion of the Local Government, be attended with danger or inconvenience to the public ; and

(i) proving generally for the prevention of danger, injury or annoyance to the public or any person, or of danger or injury to property, or of obstruction to traffic.

(3) All rules made under this section shall be published in the local official Gazette ; and, on such publication, shall have effect as if enacted in this Act.

Posting of notices.

12. The prescribed authority shall give, in the prescribed manner, public notice of any rule, made by the Local Government under section 11, prohibiting or regulating the driving of motor vehicles in any public place ; or limiting the speed of motor vehicles in any such place ; and for the purpose of giving effect to any such rule, shall display conspicuous notices at or near the place to which the rule refers.

Power to Local Government to exclude areas or motor vehicles from this Part.

13. The Local Government may, by notification in the local official Gazette, exclude any area specified in such notification from the operation of this Part ; and may by a like notification, exempt either generally or for a specified period any motor vehicle or class of motor vehicles from the operation of all or any of the provisions of this Part.

PART IV.

MOTOR VEHICLES TEMPORARILY LEAVING OR VISITING BRITISH INDIA.

Power of Governor General in Council to make rules.

14. (1) The Governor General in Council may make rules for all or any of the following purposes, namely :—

(i) for the grant and authentication of any travelling passes, certificates or authorities for the use of persons temporarily taking their motor vehicles out of British India, or to drivers of such vehicles when proceeding out of British India for the purpose of driving such vehicles, and

(ii) prescribing the conditions subject to which motor vehicles brought temporarily into British India by persons intending to make a temporary stay there may be possessed, used and driven.

(2) All rules made under this section shall be published in the Gazette of India; and, on such publication, shall have effect as if enacted in this Act.

Saving.

15. Nothing in this Act or in any rule made [by the Local Government under section 11] relating to—

(a) the registration of motor vehicles,

(b) requirements as to construction, identification or equipment of such vehicles, or

(c) the licensing or *qualifications of drivers of such* vehicles,

shall apply in the case of any motor vehicle such as is referred to in clause (ii) of sub-section (1) of section 14, or of any person possessing, using or driving the same, provided that the requirements of any rule made under the said clause and applicable to such vehicle or person are complied with.

PART V.

MISCELLANEOUS.

Penalties.

16. Whoever contravenes any of the provisions of this Act or of any rule made thereunder shall, if no other penalty is elsewhere provided in this Act for such contravention, be punishable with fine which may extend to one hundred rupees, and, in the event of such person having been previously convicted of an offence under this Act or any rule made thereunder, with fine which may extend to two hundred rupees.

Cognizance of offences.

17. No Court inferior to that of a Presidency Magistrate or a Magistrate of the second class shall try any offence punishable under this Act or any rule made thereunder.

Cancellation and suspension of licence and disqualification for obtaining licence.

18 (*1*) A Local Government may, in its discretion,—(*i*) cancel or suspend any licence granted under this Act, and

(*ii*) declare any person disqualified for obtaining a licence under this Act either permanently or for such period as it thinks fit.

[(*1A*) The prescribed authority may, subject to such conditions and limitations as may be prescribed, cancel or suspend any licence granted under this Act.]

(*2*) Any Court by which any person is convicted of an offence against the provisions of this Act or any rule made thereunder or of any offence in connection with the driving of a motor vehicle shall, if such person holds a licence under the Act, cause particulars of the conviction to be endorsed thereon and may, in respect of such person and of his licence, if any, exercise the like powers as are conferred by sub-section (*1*) on the Local Government :

Provided that no order made by a Court under this sub-section shall affect any person or licence for a period exceeding one year from the date of such conviction.

(*3*) Any Court before which the holder of a licence under this Act is accused of any offence mentioned in sub-section (*2*)

may suspend such licence until the termination of the proceedings before it.

(4) A copy of every order of cancellation, suspension or disqualification made under this section in respect of a licence or the holder of a licence shall be endorsed on the licence, and a copy of endorsement, in accordance with the provisions of this section, shall be sent to the authority by which such licence has been granted.

(5) Every holder of a licence shall, when called upon to do so, produce his licence before any authority acting under this section.

(6) A person whose licence has been cancelled or suspended in accordance with the provisions of this section, shall, during the period for which such order of cancellation has effect, or during the period of suspension, as the case may be, disqualified for obtaining a licence.

(7) No person whose licence has been endorsed or who has been disqualified for obtaining a licence shall apply for, or obtain, a licence without giving particulars of such endorsement or disqualification.

19. *Rep. by the Repealing Act, 1927 (12 of 1927).*

SCHEDULE.

[*Repealed by the Repealing Act, 1927 (12 of 1927)*].

MOTOR VEHICLES INTERNATIONAL CIRCULATION RULES, 1931

HOME DEPARTMENT.

No. F. 1148-28—the 27th May 1931. WHEREAS the Government of India have acceded to the International Convention relative to motor traffic concluded at Paris on the 24th day of April, one thousand nine hundred and twenty-six;

In exercise of the powers conferred by section 4 of the Indian Motor Vehicles Act, 1914 (VIII of 1914), and in supersession of the notifications of the Government of India in the Home Department, noted on the margin, the Governor-General in Council is pleased to make the following rules:—

1. No 1066-C., dated the 25th February, 1915.
2. No F 884-27 Judl., dated the 6th July, 1929.
3. No F.884-27 Judl., dated the 30th September, 1929.

PART I.

PRELIMINARY.

1. *Short title.*—These rules may be called the **Motor Vehicles International Circulation Rules, 1931.**

2. *Definitions.*—In these unless there is anything repuggnant in the subject or context—

(i) "The Convention" means the International Convention relative to motor traffic concluded at Paris on the 24th day of April, 1926.

(ii) "International Driving permit" means an International permit issued under Article 7 of the Convention.

(iii) "Motor cycle" means a motor vehicle supported by not more than three wheels and weighing not more than 5 cwts.

PART II.

MOTOR VEHICLES LEAVING BRITISH INDIA UNDER AN INTERNATIONAL DRIVING PERMIT.

3. *Constitution and duties of the competent authority under the Convention.*—(1) For the purposes of the Convention, the Commissioner of Police in Calcutta, Bombay, Madras and Rangoon, and elsewhere the District Magistrate shall be the competent authority, and is hereby empowered to carry out, in accordance with and subject to the provisions of these rules, the following duties, that is to say :—

(*a*) when the owner of any motor vehicle desires to avail himself of the facilities given by the Convention during travel in any of the Contracting States mentioned in the second schedule—to examine the vehicle, and if satisfied, after such examination that the vehicle is suitable, or is of a type which has been declared by the Government of India to be suitable, for use on the highway outside India, and that it fulfils the conditions specified in articles 1 to 7 of the Convention reproduced in the first schedule, to issue a certificate of fitness, in Form A in the third schedule or in a form to the like effect;

(*b*) to examine any person submitting himself for examination and if, upon examination, he is found to be competent, to issue to him a driver's certificate of competence in form B in the third schedule, or in a form to the like effect;

Provided that a certificate of competence shall not be granted to any person who is under 18 years of age ;

(*c*) subject to the conditions imposed by rule 4 to the issue to the owners of motor vehicles, on behalf of the Local Government, an International driving permit, in form C in the third schedule over the signature of Secretary to the Local Government, or in a form to the like effect.

(2) The Local Government may empower any automobile association which in its opinion is competent for the purpose to carry on the duties of the competent authority under sub-rule (1) and an automobile association so empowered may carry out the said duties in accordance with and subject to the provisions of these rules;

Provided that a certificate of fitness or competence or an international driving permit issued by an automobile association so empowered shall be subject to counter-signature by the competent authority and shall be of no effect unless so countersigned.

4. *Conditions of issue of International Driving Permit.*—The following conditions shall be fulfilled before an International Driving permit is issued:—

(*a*) every motor vehicle for which an International Driving permit is issued shall be a motor vehicle in respect of which a certificate of fitness shall have been issued in pursuance of rule 3; and

(*b*) particulars as to the driver or drivers of the motor vehicles shall be specified on the International Driving permit in the place provided for the purpose, and every such driver shall possess a certificate of competence issued in pursuance of rule 3.

5. *Photographs to be affixed to driver's certificate.*—Every driver's certificate of competence shall have a photograph of the holder approved by the competent authority affixed thereon, with the date on which the photograph was taken; and such photographs must be more than one year old at the time of issuing the certificate.

6. *Certificate or permit to be in English.*—Every certificate or International Driving permit shall be in English.

7. *Validity of certificate or permit.*—Every certificate of fitness or of competence, and every International Driving permit issued under the foregoing provisions shall be valid for a period of one year from the date of issue.

8 *Certificate or permit to be registered.*—The issue of every certificate of fitness or of competence, and of every International Driving permit shall be entered in a register to be maintained in the office of the Commissioner of Police, or the District Magistrate, as the case may be, in such form as he may consider suitable.

9. *Fees payable on certificate or permit.*—There shall be payable in advance in respect of every certificate or permit issued under these rules the following fees, namely :—

	Rs.
Certificate of fitness of motor-car	5
Driver's certificate of competence	5
International Driving permit	5

Provided that in the case of a motor cycle, one-half only of the foregoing fees shall be chargeable.

10. *Second permit not required if first is current.*—Every person exporting from British India, to a destination outside British India, not being a destination in an Indian State, any motor vehicle, in respect of which an International certificate and an International Driving permit exist, shall cause the said certificate and permit in respect of such vehicle to be produced for counter-signature and registration—

(i) in the case of export by sea, before the Customs-Collector at the port of export,

(ii) in the case of export by land, before the District Magistrate having jurisdiction in the place of export.

(2) The said Customs-Collector or District Magistrate shall endorse the said certificate and permit accordingly and shall intimate the fact to the office, if any, in which the entry of the said vehicle into British India under these rules was first registered.

PART III.

Motor Vehicles arriving in British India under an International Driving permit.

11. *Application for endorsement of permit and registration of vehicle.*—Any person in charge of a motor vehicle landed

at a port in British India, holding in respect of such vehicle an International Driving permit shall produce such permit, and apply to the Customs-Collector of the port for the endorsement of his permit and for the registration of the motor vehicle covered thereby.

12. *Duties of the Customs-Collector on receipt of application.*—On receiving such an application, the Customs-Collector shall satisfy himself that the permit was issued by competent authority; that the period of its validity has not expired, and that the vehicle corresponds with the vehicle described in the permit and has affixed to it the distinguished marks required to be carried by Article 5 of the Convention, and that the driver or drivers (if any) are the person or persons whose names appear on the permit.

13. *Endorsement of permit and registration of vehicle.*—If the Customs-Collector is satisfied that the requirements of rule 12 have been complied with, he shall endorse on the part of the permit set aside for the purpose the name of the port and shall sign, seal and date the endorsement, and shall enter in a register to be maintained by him the following particulars:—

(*a*) Number.
(*b*) Place of issue of International Driving permit.
(*c*) Date of issue of permit.
(*d*) Name of authority or association which issued permit.
(*e*) Full name and home address of owner of vehicle.
(*f*) Description of vehicle (*e. g.*, motor car, motor cycle etc.).
(*g*) Shape and colour of body of vehicle.
(*h*) Letters and numbers on identification plates.
(*i*) Date of registration.

14. *Copy of entry in register to be sent to local executive authorities.*—The Customs-Collector shall forward without delay a copy of every entry made in his register in accordance with rule 13 in case of motor vehicles landed at Calcutta, Bombay, Madras and Rangoon to the Commissioner of Police,

and in the case of motor vehicles landed elsewhere, to the District Magistrate.

15. *Effect of endorsement and registration.*—The endorsement of an International Driving permit and the registration of the motor vehicle covered thereby in accordance with these rules shall, during validity of such permit, be deemed to be in compliance with the conditions subject to which the motor vehicle may be possessed, used and driven in British India by the persons respectively referred to in such permit.

16. *Application of rules to motor vehicles entering British India by land.*—Any person importing by land into British India from any place outside British India, not being a place in an Indian State, any motor vehicle, in respect of which an International certificate and an International Driving permit exist, shall, within three days of his first arrival in British India, apply to any competent authority for the endorsement of the said permit and the registration of the said motor vehicle, and the competent authority to whom such application is made shall proceed in the manner prescribed in rules 12-15 as if he were the Customs-Collector.

FIRST SCHEDULE.

ARTICLES 1 TO 8 OF THE INTERNATIONAL CONVENTION RELATIVE TO MOTOR TRAFFIC CONCLUDED AT PARIS ON THE 24TH APRIL, 1926 WITH THE ANNEXES THERETO.

General Provisions.

ARTICLE 1

The Convention applies to road motor traffic in general irrespective of the object and nature of the transport, subject, however, to the special regulations regarding public passenger transport services and public goods transport services.

ARTICLE 2.

All passenger and goods-carrying motor vehicles running on any road to which the public have access, other than

vehicles running on rails, are regarded as motor vehicles for the purposes of the present Convention.

Conditions to be fulfilled by Motor Vehicles in order that they may be admitted to travel on a Road to which the Public have Access.

ARTICLE 3.

Every motor vehicle, in order to receive international authorisation to travel on any road to which the public have access, must either have been recognised as suitable for use on any road to which the public have access after an examination by the competent authority or by an association authorised by that authority or must conform to a type approved in the same manner. The vehicle must, in any case, fulfil the following conditions :—

I. The motor vehicle must be equipped with the following :—

(a) Strong steering apparatus which will allow the vehicle to be turned easily and with certainty.

(b) Either two systems of brakes, independent of each other, or one system of brakes with two independent means of operation, of which one means of operation will function, even if the other fails to function, provided that in all cases the system used is really effective and rapid in action.

(c) If the weight of the motor vehicle when empty exceeds 350 kilog, a mechanism by means of which the vehicle can from the driver's seat be made to move backwards under its own power.

(d) When the combined weight of the empty motor vehicle and the weight of the maximum load which it is officially declared to be capable of carrying exceeds 3,500 kilog, a special mechanism, such as can prevent, in all circumstances, the vehicle from running backwards, and in addition a reflecting mirror.

. The controls and steering apparatus must be so placed that the driver can manage them with certainty and at the same time have a clear view of the road.

The machinery must be such as to work with certainty and disposed in such a way as to avoid, as far as possible, all danger of fire or explosion ; as not to constitute any sort of danger to traffic and so as not to frighten or seriously inconvenience by noise, smoke or smell. The vehicle must be equipped with a silencer.

The wheels of motor vehicles and trailers drawn by them must be fitted with rubber tyres or with some other tyres of equivalent elasticity.

The distance between the ends of the hub-caps must not exceed the maximum width of the remainder of the vehicle.

II. The motor vehicle must carry :—

1. At the front and the back, marked on plates or on the vehicle itself, the registration number which has been allotted to it by the competent authority. The registration number placed at the back as well as the distinctive mark referred to in Article 5 must be lit up as soon as they cease to be visible by the light of day.

In the case of a vehicle followed by a trailer the registration number and the distinctive mark referred to in Article 5 are repeated behind the trailer, and the regulation regarding the lighting of these marks applies to the trailer.

2. In an easily accessible position and in a form easily legible, the following particulars :—

(i) Name of maker of chassis.

(ii) Maker's chassis number.

(iii) Maker's engine number.

III. Every motor vehicle must be fitted with an audible warning device of sufficient strength.

IV. Every motor vehicle travelling alone must, during the night and from sunset, be fitted in front with at least two white lights placed one on the right and the other on the left, and, at the back, with a red light.

For motor bi-cycles unaccompanied by side car, the number of lights in front may be reduced to one.

V. Every motor vehicle must also be equipped with one or more devices capable of effectively illuminating the road for a sufficient distance ahead unless the two white lights prescribed above already fulfil this condition.

If the vehicle is capable of proceeding at a speed greater than 30 kilom. an hour this distance must not be less than 100 metres.

VI. Lamps which may produce a dazzling effect must be provided with means for eliminating the dazzling effect when other users of the road are met, or on any occasion when such elimination would be useful. The elimination of the dazzling effect must, however, leave sufficient light to illuminate the road clearly for at least 25 metres.

VII. Motor vehicles drawing trailers are subject to the same regulations as separate motor vehicles in so far as forward lighting is concerned; the rear red light to be carried on the back of the trailer.

VIII. In so far as the limits regarding weight and dimensions are concerned, motor vehicles and trailers must satisfy the general regulations in force in the countries in which they travel.

Delivery and Recognition of International Certificates for Motor Vehicles.

ARTICLE 4.

With the object of certifying that every motor vehicle which has received international authorisation to travel on a road to which the public have access fulfils the conditions laid down in Article 3 or is able to fulfil them, international certificates are delivered on the model and according to the remarks contained in Annexes A and B to the present Convention.

These certificates are valid for one year from the date of their delivery. The written particulars which they bear must

always be written in Latin characters or in so-called English script.

The international certificates delivered by the authorities of one of the contracting States or by an association authorised by them with the counter-signature of the authority give the right to travel freely in all other contracting States and are recognised therein as valid without further examination. The right to use the international certificate may, however, be refused if it is clear that the conditions laid down in Article 3 are no longer being fulfilled.

Distinguishing Mark.

ARTICLE 5.

Every motor vehicle, to receive international authorisation to travel on a road to which the public have access, must carry in a visible position in the rear, a distinguishing mark consisting of from one to three letters written on a plate or on the vehicle itself.

For the purposes of the present Convention the distinguishing mark corresponds either to a State or to a territory, which constitutes a distinct unit from the point of view of the registration of motor vehicles.

The dimensions and colour of this sign, the letters, their dimensions and their colour are given in the table contained in Annex C of the present Convention.

Conditions to be filled by Drivers of Motor Vehicles before receiving International Authorisation to drive a Motor Vehicle on a Public Road.

ARTICLE 6.

The driver of a motor vehicle must possess qualifications which provide a reasonable guarantee of public safety.

In so far as international traffic is concerned, nobody may drive a motor vehicle without having received a special authorisation delivered by a competent authority or by an association authorised by it after giving proof of his competence.

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